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Supreme Court, U.S.
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No. 00-6029

In The

Supreme Court of the United States

TRACY RAGSDALE,

Petitioner,

v.

WOLVERINE WORLD WIDE, INC.,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

JOINT APPENDIX

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RELEVANT DOCKET ENTRIES

U.S. District Court, Eastern District of Arkansas

Date Filed	Doc. No.	Description
12/22/1997	1	COMPLAINT; Summons issued and returned to: atty for service. ($150.00 filing fee paid – receipt no. 100-11943) [Date Entered: 12/22/97, By: tm]
		* * *
02/27/1998	6	ANSWER by deft Wolverine Worldwide [Date Entered: 03/02/98, By: jt]
		* * *
04/10/1998	10	AMENDED complaint w/Jury Demand by pltf [Date Entered: 04/10/98, By: jt]
04/21/1998	11	REQUEST by plaintiff Tracy Ragsdale for Admissions. [Date Entered: 04/21/98, By: mf]
		* * *
06/01/1998	14	SECOND REQUEST FOR ADMISSIONS by plaintiff Tracy Ragsdale [Date Entered: 06/01/98, By: tm]
		* * *
06/29/1998	21	MOTION by pltf for partial summary judgment [Date Entered: 06/30/98, By: jt]
06/29/1998	22	BRIEF by pltf in support of motion for partial summary judgment [21-1] [Date Entered: 06/30/98, By: jt]

06/29/1998 23 STATEMENT OF FACTS (Local Rule 56.1) by pltf in support of motion for partial summary judgment [21-1] [Date Entered: 06/30/98, By: jt]

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07/06/1998 25 RESPONSE by defendant Wolverine Worldwide to pltf's second request for admissions [14-1] [Date Entered: 07/06/98, By: mf]

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07/09/1998 27 ORDER by Judge James M. Moody granting pltf's motion for leave to file second amended complaint [19-1] (cc: all counsel) [Date Entered: 07/09/98, By: tm]

* * *

07/16/1998 30 SECOND AMENDED complaint by pltf Tracy Ragsdale adding Warren E Dupwe, Trustee in Bankruptcy for the Tracy Ragsdale Estate; terminating Corporation X; Jury Demand [Date Entered: 07/16/98, By: jt]

07/17/1998 31 REPLY by defendant Wolverine Worldwide to pltf's response to motion to extend time to respond to pltf's motion for partial summary judgment [28-1] [Date Entered: 07/17/98, By: tm]

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07/29/1998 33 CROSS-MOTION by defendant Wolverine Worldwide for partial summary judgment [Date Entered: 07/30/98, By: tm]

07/29/1998 34 RESPONSE by defendant Wolverine Worldwide to pltf's motion for partial summary judgment [21-1] [Date Entered: 07/30/98, By: tm]

07/29/1998 34 MEMORANDUM by defendant Wolverine Worldwide with attached exhibits in support of motion for partial summary judgment [33-1] [Date Entered: 07/30/98, By: tm]

07/29/1998 35 STATEMENT OF DISPUTED MATERIAL FACTS (Local Rule 56.1) by defendant Wolverine Worldwide in support of motion for partial summary judgment [33-1] [Date Entered: 07/30/98, By: tm]

07/29/1998 36 MATERIAL FACTS (Local Rule 56.1) by defendant Wolverine Worldwide in support of motion for partial summary judgment [33-1] [Date Entered: 07/30/98, By: tm]

08/03/1998 37 RESPONSE by defendant Wolverine Worldwide to pltf's second request for admissions [14-1] [Date Entered: 08/03/98, By: tm]

08/03/1998 38 ANSWER TO SECOND AMENDED COMPLAINT by defendant Wolverine Worldwide [Date Entered: 08/03/98, By: tm]

* * *

08/13/1998 40 RESPONSE by pltfs Tracy Ragsdale and Warren E Dupwe, Trustee to deft's cross motion for partial summary judgment [33-1] [Date Entered: 08/13/98, By: tm]

08/13/1998 41 MEMORANDUM by pltfs Tracy Ragsdale and Warren E Dupwe, Trustee in support of motion response [40-1] [Date Entered: 08/13/98, By: tm]

08/13/1998 42 RESPONSE by pltfs Tracy Ragsdale and Warren E Dupwe, Trustee to deft's statement of additional undisputed material facts [36-1] [Date Entered: 08/13/98, By: tm]

08/24/1998 43 REPLY BRIEF by deft to pltf's response to deft's motion for partial summary judgment [33-1] [Date Entered: 08/25/98, By: jt]

* * *

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09/18/1998 48 MEMORANDUM by defendant Wolverine Worldwide in support of motion for partial summary judgment [47-1] [Date Entered: 09/18/98, By: tm]

* * *

10/12/1998 54 RESPONSE by plaintiff Tracy Ragsdale to dft's motion for partial summary judgment [47-1] [Date Entered: 10/14/98, By: mf]

10/12/1998 55 BRIEF by plaintiff Tracy Ragsdale in support of response to dft's second motion for partial summary judgment [54-1] [Date Entered: 10/14/98, By: mf]

10/12/1998 56 RESPONSE by plaintiff Tracy Ragsdale to deft's statement of undisputed material facts [35-1] [Date Entered: 10/14/98, By: mf]

* * *

11/03/99 65 ORDER by Judge James M. Moody denying pltf's motion for partial summary judgment [21-1]; granting deft's cross-motion for partial summary judgment [33-1]; granting deft's second cross-motion for partial summary judgment [47-1]; finding motion to continue [57-1] moot; judgment to be entered dismissing pltf's claims in their entirety EOD: 11/4/98 (cc: all counsel) [Date Entered: 11/04/98, By: jt]

11/03/1998 66 JUDGMENT: by Judge James M. Moody, pursuant to Order granting summary judgment with respect to each remaining claim set forth in pltf's Second Amended Complaint, pltf's complaint is dismissed with prejudice in its entirety; terminating case EOD: 11/4/98 (cc: all counsel) [Date Entered: 11/04/98, By: jt]

11/13/1998 67 MOTION (FILED IN LITTLE ROCK) by plaintiff Tracy Ragsdale to vacate Court order [65-1] [Date Entered: 11/18/98, By: tm]

11/13/1998 68 MEMORANDUM (FILED IN LITTLE ROCK) by plaintiff Tracy Ragsdale in support of motion to vacate Court order [65-1] [67-1] [Date Entered: 11/18/98, By: tm]

* * *

12/04/1998 71 RESPONSE by defendant Wolverine Worldwide to pltf's motion to vacate Court order (to alter or amend [65-1] [67-1] [Date Entered: 12/04/98, By: mf]

07/06/1999 72 NOTICE by plaintiff Tracy Ragsdale of filing supplemental brief [Date Entered: 07/06/98, By: tm]

08/05/1999 73 ORDER by Judge James M. Moody denying pltf's motion to vacate or amend Court order [65-1] [67-1] (cc: all counsel) [Date Entered: 08/05/99, By: tm]

08/10/1999 74 SUPPLEMENTAL RESPONSE by defendant Wolverine Worldwide to pltf's motion to alter or amend the Court 11/3/98 Order. [Date Entered: 08/10/99, By: mf]

08/11/1999 75 NOTICE of appeal by plaintiffs Warren E Dupwe, Tracy Ragsdale from District Court decision [65-1], [66-2], (73-1] (appeal fees paid) (2 certified copies to clerk 8USCA), (cc: counsel) [Date Entered: 08/12/99, By: dc]

* * *

09/14/2000 76 Opinion (8USCA) [Date Entered: 09/14/00, By: dc]

09/14/2000 77 MANDATE from 8 USCA affirming the decision of the District Court [75-1] [Date Entered: 09/14/00, By: dc]

09/22/2000 78 NOTICE by plaintiff Tracy Ragsdale of filing a petition for a writ of certiorari

with Supreme Court #00-6029 [Date Entered: 09/25/00, By: dc]

07/23/2001 79 LETTER to court from Supreme Court, the motion for leave to proceed in forma pauperis is granted and the petition for a writ of certiorari are granted [Date Entered: 07/25/01, By: dc]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

TRACY RAGSDALE, Plaintiff,	)	
VS.	)	NO. J-C-97-475
WOLVERINE WORLDWIDE, INC., d/b/a FROLIC FOOTWEAR, A FOREIGN CORPORATION DOING BUSINESS IN THE STATE OF ARKANSAS, Defendant.	)	

DEPOSITION OF
TRACY RAGSDALE
June 5, 1998

JENNY BURKS, COURT REPORTER
RIVERSIDE REPORTING SERVICE
Suite 303 - 24 North Second
Memphis, Tennessee 38103
(901) 527-1100

RIVERSIDE REPORTING SERVICE

[2] The deposition of TRACY RAGSDALE, taken on behalf of the Defendant, on this, the 5th day of June, 1998, pursuant to notice and consent of counsel, beginning at approximately 10:25 a.m., in the Law Offices of Barrett & Deacon, 300 South Church Street, Jonesboro, Arkansas.

This deposition is taken pursuant to the terms and provisions of the Federal Rules of Civil Procedure.

All forms and formalities, excluding the signature of the witness, are waived, and objections alone as to matters of incompetency, irrelevancy and immateriality of the testimony are reserved, to be presented and disposed of at or before the hearing.

[3] APPEARANCES

FOR THE PLAINTIFF: LUTHER O'NEAL SUTTER, ESQ.
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ALSO PRESENT: Bob Smith

* * *

[14] River Vo-tech in Pocahontas for a year.

Q. What kind of course did you take there?

A. Accounting, math, English, computer.

Q. Okay. Are you currently working?

A. Yes.

Q. Where are you work now?

A. S. B. Power Tools in Walnut Ridge

Q. Esby's?

A. S. B.

Q. Power Tools. In Walnut Ridge?

A. Yes, sir.

Q. What do you do there?

A. I assemble jig saws.

Q. That's a manufacturing facility, I take it?

A. They make power drills, jig saws.

Q. How long have you been there?

A. A month.

Q. How did you come to get this job?

A. They ran an ad in the paper and I went to the unemployment office and filled out an application.

Q. What paper did you see the ad in?

A. Times Dispatch at Walnut Ridge.

Q. Okay. What's your rate of pay there?

A. $5.75 an hour.

Q. Do they have any production incentives?

[15] A. No, Sir.

Q. Do you have any benefits?

A. Not yet.

Q. Okay. I take it after you've –

A. After I'm there nine months I get insurance, dental, vision and stuff like that.

Q. After termination of your employment with Frolic Footwear, tell me when you next went to work?

A. December 31st, 1996 I went to work at B. J.'s Quick Shop in Imboden.

Q. What did you do there?

A. Cashier, cook.

Q. How long were you there?

A. Until may of '89, the first of May.

Q. And you left there to go to work for the –

A. S. B. Power Tools.

Q. Okay. How many hours a week approximately did you work at B. J.'s Quick Shop?

A. For the first two months it was like part-time like about twenty hours. And then after that, probably February, I went full time.

Q. Why was it part-time initially?

A. Because I didn't think I was up for forty hours yet.

Q. Why was that?

[16] A. Because I had lost so much weight taking radiation I didn't have very much energy.

Q. Between August, do you remember your termination date from Frolic Footwear?

A. I want to say it was August 26th. If I didn't come back that day then not to come back is what they said.

Q. From August 26th of '96 until December 31 of '96 when you went to work at the quick shop did you seek employment anywhere during that period of time?

A. No, sir. My doctor, Dr. Lynch, told me not to go back to work right yet to try to rebuild my strength.

Q. Okay. And it wasn't, I take it then it wasn't until December before he released you to return to work?

A. Yes, sir.

Q. Okay. And at that time I guess he told you to try to do it part-time or light duty or something, I take it?

A. He told me in August I could, but I didn't -- like he told me I could go back to Frolic four hours a day. And my supervisor, Teresa Stinnett, said no, if I couldn't come back the hours they were working not to come back.

[17] Q. Did he give you any documentation to that effect that you could come back four hours a day?

A. I think he's got it in his file.

Q. Did you bring anything and give it to Teresa Stinnett at that time?

A. No. We just told her and she said it didn't matter. She said if I couldn't come back and work the hours they were working not to worry about it.

Q. And when did you have this discussion with Teresa?

A. The Thursday or Friday before the 26th.

Q. And Teresa Stinnett is whom?

A. My supervisor.

Q. And she's at the Walnut Ridge plant?

A. Yes.

Q. Okay. Did you talk with anyone else at Frolic that day other than Teresa?

A. No, sir.

Q. Was anyone with you when you went over there –

A. My mother.

Q. – and spoke to Teresa? Your mother?

A. Yes.

Q. That would be Mrs. Malone?

[18] A. Yes, sir.

Q. Who's present here today, correct?

A. Yes, sir.

Q. Why did you go in to talk to Teresa on the day that you did?

A. To get another sick leave paper.

Q. Okay.

A. For the doctor to fill out. And she said I couldn't have no more.

Q. What did she tell you?

A. If I couldn't come back the 26th not to come back.

Q. And she's the one who told you that day?

A. (Witness nods head affirmatively).

MR. SUTTER: You've got to –

A. Yes, sir.

MR. SUTTER: You have to say something.

A. I'm sorry. Yes, sir.

Q. Tell me, to the best of your ability to recall, Mrs. Ragsdale, exactly what Ms. Stinnett told you when you asked for the additional leave slip?

A. She said that my time was up, if I didn't come back not to come back.

Q. And what did you say?

A. I told her okay. I'd call my doctor. And [19] he said no.

Q. Okay. What did you call your doctor and ask?

A. If I could return back to work full time.

Q. What about this four hour business, did you talk to Ms. Stinnett about that at this time?

A. Yes. The doctor asked me to ask them. He would release me for four hours, but not full time.

Q. That's okay, Mrs. Ragsdale. Mrs. Ragsdale, if you need to stop at any point in time, you just tell me and that's all right. Okay?

A. Okay.

Q. Now, did you and her discuss the four hours at that time?

A. Yes, sir.

Q. Okay. Tell me about, to the best of your knowledge, the extent of that conversation?

A. I told her that the doctor would release me to come back four hours to see if I can do it or build up to a full hour day. And she said, no, that the policy was if I couldn't come back the hours they were working, not to worry about it, not to come back.

Q. Okay. Now, did you have any conversation on that with Mr. Gene Cook?

A. No.

[20] Q. Did you have any conversations at that time or after that date with Mr. Cook about coming back to work?

A. No.

Q. Did you ever have any conversations at that time or after that date with Mr. Cook about coming back to work?

A. No.

Q. Okay. Did you ever sit down with anyone and discuss possible jobs that you could do where you could come back on a four hour basis or a light duty basis?

A. Teresa said we didn't have none.

Q. So you all didn't discuss it any further than that?

A. No.

Q. Did you have any other conversations with Teresa or any other Frolic employee other than this conversation you just related to me about coming back to work on a light duty basis or a reduced hour basis?

A. No.

Q. That was the only time that you all discussed that?

A. Yes, sir.

Q. Okay. And at that time you didn't have a [21] note with you from your physician, as I understand it?

A. No. I come to get a leave paper for him to fill out and she couldn't give me one.

Q. Okay. Did she tell you that you had exhausted your leave under the Frolic policy?

A. Yes, sir.

Q. After this conversation you had with Ms. Stinnett, sometime shortly before August the 26th, 1996 is the best I can get it, you said Thursday or Friday before that date?

A. Yes, sir.

Q. Did you have any other conversations with Ms. Stinnett after that one, either in person or on the phone?

A. No, sir.

Q. Okay. After this, after the termination of your employment with Frolic did you attempt to find any

employment on a reduced hour scale or a light duty basis? Did you look for any –

A. No, sir.

Q. Okay. At least not until December of 1996?

A. That's right.

Q. Okay. Do you recall when you first started working for Frolic?

A. March of '95.

* * *

[24] Q. Is this your first marriage?

A. Yes, sir.

Q. And on this employment application it says that you were laid off from Brown Shoe, is that correct?

A. Yes, sir.

Q. And that you were laid off from S & B Power Tools, is that correct?

A. Yes, sir.

Q. It shows that you were laid off from Coastal C-Mart, is that correct?

A. I went to work at Frolic and quit Coastal.

Q. Okay. When you were first hired at Frolic, do you remember what your position was?

A. Hammer, hammerer.

Q. Hammerer. Okay. What department?

A. Fitting.

Q. Who was your supervisor?

A. Teresa Stinnett.

Q. Is that the position you held throughout your employment with Frolic?

A. No.

Q. Okay. What did you do after that position?

A. I can't remember what it was called. And then I went to – what was it – I put the heel in the [25] back of the shoe and pressed it.

Q. Okay.

A. And that's where I was when I went on sick leave.

Q. That was the position you had when you went on sick leave?

A. (Witness nods head affirmatively).

Q. Yes?

A. Yes.

Q. Okay.

MR. BENNETT: Let's mark this as Exhibit 2.

(Whereupon, Exhibit 2 was marked)

Q. I'll pass this over to you and your counsel, Mrs. Ragsdale, and let you take a look at that document. Do you recognize that document, Mrs. Ragsdale?

A. Yes.

Q. It appears to be an orientation checklist from when you were initially hired?

A. Yes.

Q. Is that your signature on the second page?

A. Yes.

Q. Do you recall Ms. Stinnett going over these things with you right after you were hired?

* * *

[28] know.

Q. Okay. Did you ever see a copy of the collective bargaining agreement?

A. No, sir.

Q. Okay. Did you ever see the shop rules?

A. I don't know.

MR. BENNETT: Let's mark that as the next exhibit.

(Whereupon, Exhibit 6 was marked)

Q. I'll show you and your counsel what's been marked as Exhibit 6. Do you recognize Exhibit 6 as the shop rules, Mrs. Ragsdale?

A. Yes.

Q. Okay.

MR. BENNETT: Mark that as Exhibit 7.

(Whereupon, Exhibit 7 was marked)

Q. I'll hand you and your attorney what's been marked as Exhibit 7, an employee bulletin posted and see if you recognize that, Mrs. Ragsdale?

A. No, I don't recognize it.

Q. Okay. That's fine. Did the company have a bulletin board where they posted notices?

A. Yes.

Q. Did you ever look at that bulletin board on occasion?

[29] A. Yes.

Q. Okay. And it is your testimony that you never saw that on the bulletin board?

A. Yes.

Q. Okay. Have you ever seen that document before today anywhere?

A. Yes, Skil.

Q. Excuse me?

A. Skil, ~~Skil's~~ got it posted.

Q. Skil?

A. S. B. Power Tools.

Q. Okay.

MR. BENNETT: Let's mark this as the next numbered exhibit.

(Whereupon, Exhibit 8 was marked)

Q. I'll slide what's been marked as Exhibit 8 over to you and your counsel and see if you recognize this collective group of documents, Mrs. Ragsdale?

MR. SUTTER: Counsel, did these documents come out of her personnel file?

MR. BENNETT: Yes.

MR. SUTTER: Off the record.

(Brief Recess)

Q. Mrs. Ragsdale, you've had an opportunity to look over Exhibit 8, which are some documents that are [30] styled, Application for Sick Leave?

A. Yes.

Q. Do you recognize these documents, Mrs. Ragsdale?

A. Yes.

Q. Let's just go through them because I just want to identify them for the record. The first one, I think we've got them numbered or lettered each page in the lower right hand side, A, B, C, whatever. Exhibit 8, page A is an application for sick leave and that appears to be dated. Is that your signature on that page?

A. Yes.

Q. Okay. And did you date it the 21st of February?

A. Yes.

Q. Okay. On page B, is that your signature as well about middleways?

A. Yes, sir.

Q. Okay. Page C, your signature appears about middleways of that page. Is that your signature as well?

A. Yes.

Q. Okay. And page D, appears to be a doctor's note of some type. And I think it actually should be

* * *

[36] there?

A. I don't know.

Q. That's not your handwriting there?

A. No.

Q. Okay. And page N, looking at Roman numeral one, that section, who filled that section out?

A. I did.

Q. Okay. I think that's all I had to ask you about that particular document. We can set that down.

MR. SUTTER: I'm sorry. Rick, I have to go to the bathroom.

(Brief Recess)

Q. Mrs. Ragsdale, Exhibit 8 again. It appears that you first applied for Frolic sick leave on 2/21/96. That's the date on page A. Do you see that?

A. Yes, sir.

Q. Do you recall if that's about the time you went out on leave?

A. Yes, sir.

Q. Who did you speak with at this time in February of '96?

A. Teresa Stinnett.

Q. Okay. And did she tell you the procedure for filling out the sick leave?

A. Yes, sir.

* * *

[40] Q. Okay. During the course of your sick leave did you have any conversations with Ms. Stinnett or anyone about returning to work, anyone at Frolic about returning to work?

A. No, sir.

Q. Okay. During the same time period, during the February of '96 until August of '96, the period of time were you on sick leave, did you have any discussions with Ms. Stinnett or anyone else with Frolic about family medical leave?

A. No, sir.

Q. Okay. On the conversation you had with Ms. Stinnett sometime in August of 1996, towards August, near August 26th of 1996 in that conversation was there any mention of family medical leave?

A. My mother asked her about it because Skil or S. B. Tools gave it to her. And Teresa said she had never heard of it. So they asked the secretary and she had never heard of it. So they went and asked Gene Cook and he

said, well, he didn't know. He'd have to find out something about it.

Q. Okay. Did anyone ever get back to you about it?

A. No, they never did call me.

Q. Okay. So there was no other discussion [41] about it whatsoever other than that?

A. No, sir.

Q. Do you recall in February of 1996 before you took off on sick leave missing some days of work in the early part of February?

A. The 12th I went to the doctor and that's when he found the spot. But if I missed I always brought a note from the doctor.

Q. Okay. Do you recall if you missed any other time for any other ailments?

A. If I missed, I'd either have, it would be because my daughter had to go to the doctor or I did.

Q. Okay. Looking again at Exhibit 8, if you would, page L. That's one Dr. Lynch signed dated 7/19 of '96. It has written in here Hodgkin's Disease stage 2A. Do you see that?

A. Yes.

Q. What does that mean, if you know?

MR. SUTTER: Objection, calls for a medical conclusion.

MR. BENNETT: I'm asking her if she knows.

A. Hodgkin's Disease is cancer of your lymph nodes, but I don't know about the stage.

Q. Dr. Lynch never discussed that or you never

* * *

[43] Q. Okay. Did anyone at Frolic call you back then after that and tell you you had been terminated?

A. No, sir.

Q. Okay. Did they send you anything in writing telling you that?

A. Yes, sir.

Q. Okay. Do you remember why they told you you had been terminated?

A. For not showing up to work on the 26th.

Q. Of August?

A. Yes.

Q. In other words, you had exceeded the sick leave?

A. I had exceeded the sick leave.

Q. Okay.

MR. BENNETT: Let's mark that as Exhibit 9.

(Whereupon, Exhibit 9 was marked)

Q. I'll pass what's been marked as Exhibit 9 to you and your counsel and see if that's the letter that you recall receiving from Frolic. Looking at Exhibit 9, Mrs. Ragsdale, and disregarding some of the handwritten notes that obviously wasn't on the copy that was sent to

you, do you recall getting this letter from Mr. Smith dated October the 3rd of 1996?

* * *

[46] answer his question.

A. What was it?

Q. You don't recall Exhibit 12, is that what you were saying?

A. Yes.

Q. Okay. I was asking you, did you make any efforts to try to continue your health insurance with Frolic Footwear after the termination of your employment?

A. I couldn't afford to.

Q. Did you contact the company?

A. No.

Q. How do you know you couldn't afford to?

A. Because of these prices.

Q. And you're referring to the document that's been marked –

A. 10.

Q. – Exhibit 10?

A. Yes.

Q. When you moved in August of '96 or whenever it was that you moved, did you inform the company that you had moved?

A. Yes, sir.

Q. Okay. Do you recall what the job, what your job duties entailed at Frolic when you left the [47] job that you had at the time you went on leave?

A. What it consisted of?

Q. Yes, what your job duties were.

A. You took a shoe. It wasn't put together. And you had to pull the back and the inside apart, stick a plastic, heat a plastic piece up and stick it in there and then press it.

Q. Okay. Did you have to do any lifting as part of that job?

A. Just off the line and put it back on.

Q. You're talking about a shoe itself?

A. A box of shoes.

Q. A box of shoes. Do you know how much the box weighed, approximately?

A. Approximately ten, fifteen pounds.

Q. Okay. And you'd have to lift it from the floor, I take it, up to how high?

A. Yes, sir, probably about the table.

Q. Okay. And were you standing the whole time?

A. Yes, sir.

Q. Okay. And this is, I take it a repetitive movement type job, put that shoe in, take it out, just keep doing that?

A. Yes, sir.

* * *

[49] Q. Do you remember when you started taking radiation?

A. May or June, I'm not really for sure.

Q. And how long did you take radiation, Mrs. Ragsdale?

A. Up until August.

Q. The first of August or the end of August or do you recall?

A. I think it was the second week in August.

Q. Okay. And how many times a week did you have to take your radiation?

A. Five.

Q. Five times a week?

A. Yes, Monday through Friday.

Q. Every week through the second week of August?

A. I had two weeks off.

Q. Oh, in that span?

A. Yes.

Q. Okay. And Hodgkin's Disease, is that the official diagnosis of what you had, to your knowledge?

A. Yes, sir.

Q. Okay. Are you still being treated for that today?

A. No, sir.

[50] Q. Did you ever have an operation to remove this spot on your lung?

A. No, sir. They took my spleen out to see if it was in there but they never, they just biopsied the lung spot.

Q. Okay. And then treated it with radiation?

A. Yes, sir.

Q. Okay.

MR. BENNETT: Hold on a second. We may be getting through with Mrs. Ragsdale, Luther.

MR. SUTTER: Okay. (Brief Recess)

Q. Mrs. Ragsdale, let's go back on the record. You indicated that it was August the 26th of 1996 when they told you your leave expired and you'd been terminated, correct?

A. Yes.

Q. Looking at Exhibit 8. It looks like to me that your leave, looking at pages N and O, was granted through September the 20th. Do you see that?

A. Yes. I made a mistake. It was September 26th when – I'm sorry.

Q. Instead of August?

A. Instead of August.

Q. So everything, when we were talking about [51] August should have been September?

A. Yes, sir.

Q. Okay. That's fine. I just wanted to make sure that we get that clarified. That's fine. I was reading the number wrong myself. All right. Do you remember when you came in at this now September 26th time if you went to the bulletin board at that point in time and looked at job vacancies that were posted up there to see if there was anything you could do?

A. No, sir.

Q. Do you remember if they ever took you up to that bulletin board?

A. No, sir.

Q. Not after your employment was terminated you never did that?

A. No, sir.

Q. Do you have any notes or diaries or anything like that you took or made during the course of this sick leave?

A. No, sir.

Q. Any notes or anything you may have made subsequent to being terminated about this case?

A. No, sir.

Q. Did you make any taped conversations of anything with Ms. Stinnett or anyone else at Frolic

• • •

[53] Q. Okay. You state in Paragraph 18 of that Complaint, amended Complaint, that Frolic created a hostile work environment. What type of hostile work environment are you referring to there?

MR. SUTTER: We'll dismiss that claim.

MR. BENNETT: Okay.

Q. You also stat [sic] in Paragraph 18 –

MR. BENNETT: Are you talking about all of eighteen or just that portion?

MR. SUTTER: No, just the hostile work environment claim.

Q. You also state in Paragraph 18, Mrs. Ragsdale, that they treated you differently than similarly situated non-disabled employees. What is your basis for that?

A. Because they had some people that they would just work like four hours a day, but when I asked they said no.

Q. Who did they work just four hours a day that you're aware of?

A. I don't know the lady's name.

Q. Do you know her first name, middle name, nickname, anything?

A. No. She was just an old lady and she was about to retire, so they just let her work so many, [54] like two or three hours a day and then she'd go home. And the next day she'd come in and work two or three hours and she'd go home.

Q. Okay. And what job did she hold?

A. It was towards the back of the fitting room.

Q. Can you describe her for me physically?

A. No.

Q. Tall, short, fat, thin?

A. Not tall, not short, kind of middle, kind of chunky, gray-haired, that's about all I can remember.

Q. Do you know if she has a disability or anything?

A. She was always sick.

Q. Besides her, do you know anybody else they let work shortened hours?

A. Just like hearing people talk about people they let do that.

Q. What did you hear?

A. That if – I heard just that if you were sick Teresa would let you come in and work like part-time so you could keep your insurance and stuff up.

Q. Part-time meaning reduced hours?

[55] A. Yes, sir.

Q. Do you know of anybody she did that too [sic]?

A. I just heard the other girls talking about it.

Q. Who told you this?

A. Just some of the girls. I mean, I just had two or three that I worked with her that I talked to.

Q. Okay. What are their names?

A. These weren't the ones that we heard – like if we sat outside and smoked there was a bunch of us, but we didn't communicate with everybody so I didn't know everybody's name.

Q. People that you associated with, would they have told you this, that Teresa had done this?

A. No.

Q. Would it have been somebody else?

A. They started about the time I did.

Q. No, I'm not talking about – so it would have been somebody that was there when this happened you're saying?

A. Yes.

Q. All right. Give me the names of your friends that had been hanging out with you, what were their names?

A. Denise Forrest.

[56] Q. Forrest?

A. Uh-huh.

Q. Excuse me?

A. Yes.

Q. Denise Forrest.

A. Vivian Summer.

Q. Okay.

A. Peggy Grant, and then there was a girl named Linda. I don't know her last name.

Q. You understand this is a pretty serious allegation you're making, Mrs. Ragsdale. And I need to find out, if you were told these things, who actually told these things to you. And I need names to substantiate what you're saying actually occurred, okay, so I'm just trying to locate the names of these people. So you don't have any idea who may have told you that Teresa would let people come in on reduced hours?

A. No, I didn't know them.

Q. Do you know what they looked like?

A. No, I don't. I mean, I didn't pay much attention to them. We had just overheard them talking.

Q. Do you have a copy or have you provided your attorney copies of all medical bills resulting [57] from this cancer that caused your sick leave?

A. Yes. He's got some of them and I've still got to get him some.

Q. Okay. Do you know how much you had to pay for medical expenses after the date of your termination from Frolic?

A. When I filed bankruptcy I'd say my medical bills was between $50,000 and $100,000.

Q. Mr. Sutter has that information though?

A. He's got most of it. And I will get him the rest of them.

Q. Okay. Do you know what your wage rate was at the time of your termination from Frolic?

A. It was piecework, so it varied. I was probably making about $6,00, $6.50 an hour.

Q. Okay. Look at Paragraph 39 of your Complaint. You state that Frolic discriminated against you by retaliating against you for requesting an accommodation. What accommodation did you request?

MR. SUTTER: I'm going to object to that as calling for a legal conclusion because of the word accommodation. If you can break it down in layman's terms, I think it's a proper question.

Q. What did you ask Frolic to do that they didn't do?

[58] A. To let me come back to work four hours to build up my strength.

Q. Okay. And you're saying that they retaliated against you because you asked for that, that's what you're saying. I assume your lawyer's saying that's an accommodation. So you're saying they retaliated against you when you made that request to come back for four hours. How did they retaliate against you?

A. She told me they wouldn't allow it.

Q. And that's what this is about, they wouldn't allow it. Did they do anything else?

A. Huh?

Q. Did they do anything else other than tell you they're not going to allow you to come in on a reduced hour basis?

A. No. They fired me, or they let me go.

Q. Other than those things, anything else you can think of?

A. No.

Q. And you also state in Paragraph 39 that they created a hostile work environment. How did they create a hostile work environment?

MR. SUTTER: That's the same hostile work environment claim that we'll dismiss. And I want [59] to make it clear on the record that that's the only claim, only the claim of hostile work environment.

MR. BENNETT: Okay.

MR. SUTTER: There are two separate claims in there that you've recognized.

MR. BENNETT: I understand.

Q. You've also got in here that you were treated differently than similarly situated non-disabled employees. Is that the same as what you just described to me a bit ago? Is that what we're talking about, the different treatment?

A. Yes.

Q. That they let somebody, allegedly, Teresa allegedly, would let some folks come in on reduced hours?

A. Yes, sir.

Q. And that's the same claim here?

A. Yes, sir.

Q. You contend in your Complaint, Mrs. Ragsdale, that you have experienced severe mental, emotional and physically [sic] distress. Have you gone to see a psychiatrist or a psychologist for your mental wellbeing?

A. No, sir.

Q. What type of mental or emotional distress [60] have you suffered outside of your injury, your cancer?

A. Well, I was put on nerve pills because I just couldn't handle anything.

Q. You couldn't handle what? Because of your condition as far as being upset about your cancer?

A. Yes.

Q. And they put you on nerve pills because of that?

A. Yes, sir.

Q. Okay. And did they give you any other medication like that for nerves or stress?

A. I was on Valiums and they took me off them and put me on Prozac.

Q. Okay. Again, related to your cancer?

MR. SUTTER: Objection, calls for a medical conclusion.

Q. Did they tell you, is that what the doctor said?

A. I don't know.

Q. You don't know what he said?

A. No, I don't.

MR. BENNETT: Hold on one second, please. I think I may be through.

(Brief Pause)

Q. Mrs. Ragsdale, do you think that today you [61] can return to Frolic and do the job, if it was available you'd be able to return to that job with no restrictions whatsoever?

A. Today?

Q. Today.

A. Yes.

Q. Your physician hasn't given you any restrictions that would in any way keep you from doing the position you held at Frolic at the time you were terminated?

A. No.

Q. You can stand for eight hours a day?

A. Yes, sir.

Q. And you can lift and do all the repetitive motions required of that position today?

A. Yes, sir.

MR. BENNETT: That's all we have, Mrs. Ragsdale. Thank you.

MR. SUTTER: Thank you.

* * *

[63] COURT REPORTER'S CERTIFICATE

STATE OF ARKANSAS:
COUNTY OF CRITTENDEN:

I, JENNY L. BURKS, CSR, and Notary Public, Crittenden County, Arkansas, CERTIFY:

The foregoing deposition was taken before me at the time and place stated in the foregoing styled cause with the appearances as noted. Being a Court Reporter, I then reported the deposition in Stenotype, and the foregoing pages contain a full, true and correct transcript of my said Stenotype notes then and there taken.

I am not in the employ of and am not related to any of the parties or their counsel, and I have no interest in the matter involved.

WITNESS MY SIGNATURE, this, the 9th day of June, 1998.

/s/ Jenny L. Burks
JENNY L. BURKS, CSR
Arkansas Certification #369

My Commission Expires:
October 15, 2001

EXHIBIT #2

ORIENTATION CHECK LIST

JOB: Handwork

Department: Fitting

Employment Date: 3-17-95

EMPLOYEE'S NAME Tracy Ragsdale
SUPERVISORS NAME Taressia

1st DAY

1.	PLANT TOUR (where your job fits in production circle)	✓
2.	WORK HOURS (starting and quitting time)	✓
3.	BREAK PERIODS – Company Policy	✓
4.	LUNCH TIME POLICY	✓
5.	LOCATION OF RESTROOMS, CAFETERIA, VENDING MACHINES, PAY PHONES	✓
6.	OVERTIME POLICY	✓
7.	TIME CARD HANDLING	✓
8.	JOB DUTIES	✓
9.	PLANT/DEPT. SAFETY RULES	✓
10.	JOB HAZARDS (JSA)	✓
11.	ACCIDENT REPORTING POLICY	✓
12.	HAZARD COMMUNICATION TRAINING (where applicable)	✓

13.	FOOT PROTECTION	✓
14.	MACHINE LABELING – EYE/EAR PROTECTION	✓
15.	EVACUATION PROCEDURE (emergency alarms)	✓
16.	EMPLOYEE QUESTIONS	✓

2nd DAY

1.	SHOP RULES	✓
2.	PERFORMANCE EXPECTATIONS	✓
3.	QUALITY POLICY	✓
4.	HOUSEKEEPING	✓
5.	SMOKING REGULATION	✓
6.	EMPLOYEE QUESTIONS	✓

3rd DAY

1.	GROUP INSURANCE	✓
2.	MONEY ACCUMULATION PROGRAM (MAP)	✓
3.	LEAVE OF ABSENCE POLICY	✓
4.	VACATION POLICY	✓
5.	HOLIDAYS/HOLIDAY ELIGIBILITY	✓
6.	EMPLOYEE QUESTIONS	✓

4th DAY

1.	PROBATIONARY PERIOD	✓
2.	BIDDING PROCEDURE	✓
3.	BULLETIN BOARD	✓
4.	CHANGE-PERSONAL INFORMATION	✓
5.	QUALITY CIRCLE PROGRAM	✓
6.	EMPLOYEE QUESTIONS	✓

5th DAY

1.	EXPLAIN MAKE UP	✓
2.	BLUESHEET	✓
3.	OPEN DOOR POLICY	✓
4.	ADVANCEMENT POTENTIAL	✓
5.	EXPLAIN PAYCHECK DISTRIBUTION AND DEDUCTIONS	✓
6.	EMPLOYEE QUESTIONS	✓

THIS FORM MUST BE COMPLETED ON ALL NEW EMPLOYEES WITHIN THEIR FIRST WEEK OF EMPLOYMENT. COMPLETED FORM MUST BE SENT TO PLANT OFFICE FOR INDIVIDUAL PERSONNEL FILE.

The signature below acknowledges that I have been instructed regarding the above information.

Employee Signature
/s/ Tracy Ragsdale

Foreman's Signature
/s/ Taressia Stinnett

EXHIBIT #7

FROLIC FOOTWEAR DIVISION
General Office: 1020 Aggie Road,
Jonesboro, Arkansas 72401 (501) 932-7466

WOLVERINE
WWW WORLD WIDE

May 31, 1995

BULLETIN TO ALL EMPLOYEES

Please be advised the Family and Medical Leave Act has taken effect for all employees. The law provides eligible employees up to twelve (12) weeks of unpaid leave per year for certain family and medical reasons.

Please review the posting entitled "Your Rights Under the Family and Medical Leave Act of 1993." Do not hesitate to contact the Personnel Department should you have any questions.

/s/ Mary Lile Broadaway
Mary Lile Broadaway
Personnel Manager

MLB/la

Your Rights Under the Family and Medical Leave Act of 1993

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons. Employees are eligible if they have worked for a covered employer for at least one year, and for 1,250 hours over the previous 12 months, and if there are at least 50 employees within 75 miles.

Reasons For Taking Leave:

Unpaid leave must be granted for *any* of the following reasons:

- to care for the employee's child after birth, or placement for adoption or foster care;
- to care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or
- for a serious health condition that makes the employee unable to perform the employee's job.

At the employee's or employer's option, certain kinds of *paid* leave may be substituted for unpaid leave.

Advance Notice and Medical Certification:

The employee may be required to provide advance leave notice and medical certification. Taking of leave may be denied if requirements are not met.

- The employee ordinarily must provide 30 days advance notice when the leave is "foreseeable."
- An employer may require medical certification to support a request for leave because of a serious health condition, and may require second or third opinions (at the employer's expense) and a fitness for duty report to return to work.

Job Benefits and Protection:

- For the duration of FMLA leave, the employer must maintain the employee's health coverage under any "group health plan."
- Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.
- The use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

Unlawful Acts By Employers:

FMLA makes it unlawful for any employer to:

- interfere with, restrain, or deny the exercise of any right provided under FMLA;
- discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

Enforcement:

- The U.S. Department of Labor is authorized to investigate and resolve complaints of violations.
- An eligible employee may bring a civil action against an employer for violations.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

For Additional Information:

contact the nearest office of the Wage and Hour Division, listed in most telephone directories under U.S. Government, Department of Labor.

[LOGO]
U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

WH Publication 1420
June 1993

EXHIBIT #8

APPLICATION FOR SICK LEAVE
EMPLOYEES OF FROLIC FOOTWEAR,
A DIVISION OF WOLVERINE WORLD WIDE, INC.

THIS FORM MUST BE FULLY COMPLETED AND SIGNED BY THE EMPLOYEE AND ATTENDING PHYSICIAN AND DELIVERED TO THE EMPLOYMENT OFFICE OF THE PLANT WHERE EMPLOYEE WORKS WITHIN THREE (3) WORK DAYS FROM INITIAL ABSENCE CAUSED BY ILLNESS/DISABILITY OR WITHIN THREE (3) SCHEDULED WORK DAYS FOLLOWING END OF INITIAL SICK LEAVE FOR AN EXTENSION.

I. TO BE COMPLETED BY EMPLOYEE
NAME OF EMPLOYEE Tracy Lynn Ragsdale
CLOCK NO. 79038
DEPARTMENT Fitting
HOME ADDRESS P.O. Box 115 (STREET)
Black Rock, AR 72415 (CITY, STATE AND ZIP)
TELEPHONE NUMBER WHERE YOU CAN BE REACHED 878-6361 or 869-2069
I HEREBY APPLY FOR SICK LEAVE AND AUTHORIZE MY PERSONAL DOCTOR TO FURNISH ANY MEDICAL INFORMATION TO MY EMPLOYER, EMPLOYER'S INSURANCE COMPANY OR COMPANY NURSE THAT MAY BE REQUESTED DURING THE TERM OF THIS ILLNESS OR DISABILITY.
/s/ Tracy L. Ragsdale
(EMPLOYEE SIGNATURE)
2/21/96
(DATE SIGNED)

II. TO BE COMPLETED BY EMPLOYEE'S ATTENDING PHYSICIAN
THIS IS TO CERTIFY THAT ON _____ (MONTH-DAY-YEAR) I EXAMINED THE ABOVE NAMED INDIVIDUAL AND I APPROVE X, DO NOT APPROVE _, HIM/HER FOR SICK LEAVE BEGINING [sic] ON 2/21/96, I ESTIMATE THAT THE PERIOD OF DISABILITY SHOULD NOT EXCEED __ DAYS FORM THE BEGINNING DATE OF SICK LEAVE. THIS APPROVAL IS BASED ON THE FOLLOWING DIAGNOSIS:
Abnormal CXR – Mediastinoscopy 2/22/96 per Dr. Stevenson/Raborn
WHICH IS IN MY OPINION, IS THE PRIMARY CAUSE FOR APPLICANT'S NEED TO BE ABSENT FROM WORK.
/s/ [Illegible]
(PHYSICIAN'S SIGNATURE)
2/21/96
(DATE SIGNED)
800 So. Church Suite 400 Jonesboro, Ar. 72401
(PHYSICIAN'S OFFICE ADDRESS AND PHONE NUMBER)

NOTE: ABSENCE FROM WORK DUE TO ILLNESS/ DISABILITY AND FAILURE TO FURNISH THE INFORMATION REQUESTED ABOVE WILL RESULT IN TERMINATION.
NO LEAVE OR EXTENSIONS THEREOF SHALL BE GRANTED FOR LONGER THAN THIRTY (30) DAYS AT ANY ONE TIME.
THIS FORM IS NOT A SUBSTITUTE FOR A RETURN TO WORK SLIP.

APPROVED SICK LEAVE RECORD
EMPLOYEES OF FROLIC FOOTWEAR,
A DIVISION OF WOLVERINE WORLD WIDE, INC.

DATE 2-21-96

Tracy Ragsdale IS HEREWITH AUTHORIZED A 30 day (LENGTH/TIME) sick (TYPE) LEAVE PERIOD, ALL REQUIREMENTS BEING MET, FOR THE FOLLOWING REASONS: _____

_____

_____

SCHEDULED DATE TO RETURN TO WORK: 3-22-96

_____

/s/ Taressia Stinnett
(FOREMAN/DEPARTMENT SUPERVISOR) (DATE)

/s/ [Illegible]
(PLANT MANAGER) 2-21-96 (DATE)

/s/ Tracy Ragsdale (EMPLOYEE) 2-21-96 (DATE)

THE FOLLOWING POLICIES SHALL GOVERN ALL EXTENSIONS OF LEAVE PERIODS IN FORCE:

(1) NO LEAVE SHALL BE GRANTED FOR LONGER THAN THIRTY (30) DAYS AT ANY ONE TIME.

(2) IN ORDER FOR ANY LEAVE PERIOD TO BE EXTENDED IT SHALL BE NECESSARY FOR THE EMPLOYEE TO OBTAIN ANOTHER APPLICATION FOR SICK LEAVE FROM THE EMPLOYMENT OR PLANT OFFICE WITHIN THREE (3) DAYS PRIOR TO THE CONCLUSION OF THE CURRENT LEAVE PERIOD, AND MAKE WRITTEN APPLICATION FOR AN ADDITIONAL THIRTY (30) DAYS LEAVE PERIOD. THE APPLICATION FOR SICK LEAVE MUST BE COMPLETED, SIGNED AND DATED BY THE ATTENDING PHYSICIAN.

(3) THE APPLICATION FOR SICK LEAVE MUST BE RETURNED WITHIN THREE (3) SCHEDULED WORK DAYS OF THE CONCLUSION OF THE CURRENT SICK LEAVE PERIOD.

(4) ANOTHER COPY OF A COMPLETED APPROVED LEAVE RECORD, SIGNED AND DATED BY THE PLANT MANAGER AND FOREMAN OR SUPERVISOR, MUST BE OBTAINED BY THE EMPLOYEE PRIOR TO FINAL APPROVAL OF THE EXTENSION TO THE LEAVE.

(5) SHOULD THE EMPLOYEE FAIL TO EXTEND SICK LEAVE AS ENUMERATED ABOVE, THE EMPLOYEE MUST REPORT FOR WORK AT 7:00 A.M. OF THE NEXT SCHEDULED WORK DAY FOLLOWING THE CONCLUSION OF THE LEAVE WITH A DOCTOR'S STATEMENT PRONOUNCING THAT THE EMPLOYEE IS PHYSICALLY ABLE TO RETURN TO REGULAR WORK.

(6) IN THE EVENT A WRITTEN REQUEST FOR AN EXTENSION OF CURRENT LEAVE PERIOD IS NOT TIMELY AS ENUMERATED ABOVE, THE EMPLOYEE SHALL AUTOMATICALLY TERMINATE HIMSELF WITH LOSS OF ALL JOB RIGHTS AND PRIVILEGES. REASON STATED WILL BE LISTED AS VOLUNTARILY QUIT. ANY LEAVE OBTAINED BY FRAUD WILL RESULT IN TERMINATION FROM EMPLOYMENT.

APPLICATION FOR SICK LEAVE
EMPLOYEES OF FROLIC FOOTWEAR,
A DIVISION OF WOLVERINE WORLD WIDE, INC.

THIS FORM MUST BE FULLY COMPLETED AND SIGNED BY THE EMPLOYEE AND ATTENDING PHYSICIAN AND DELIVERED TO THE EMPLOYMENT OFFICE OF THE PLANT WHERE EMPLOYEE WORKS WITHIN THREE (3) WORK DAYS FROM INITIAL ABSENCE CAUSED BY ILLNESS/DISABILITY OR WITHIN THREE (3) SCHEDULED WORK DAYS FOLLOWING END OF INITIAL SICK LEAVE FOR AN EXTENSION.

I. TO BE COMPLETED BY EMPLOYEE
NAME OF EMPLOYEE Tracy Lynn Ragsdale
CLOCK NO. 79032
DEPARTMENT Fitting
HOME ADDRESS 422 West Main (STREET)
Black Rock, AR 72415 (CITY, STATE AND ZIP)
TELEPHONE NUMBER WHERE YOU CAN BE REACHED 878-6361 or 869-2069
I HEREBY APPLY FOR SICK LEAVE AND AUTHORIZE MY PERSONAL DOCTOR TO FURNISH ANY MEDICAL INFORMATION TO MY EMPLOYER, EMPLOYER'S INSURANCE COMPANY OR COMPANY NURSE THAT MAY BE REQUESTED DURING THE TERM OF THIS ILLNESS OR DISABILITY.
/s/ Tracy L. Ragsdale
(EMPLOYEE SIGNATURE)
3-18-96
(DATE SIGNED)

II. TO BE COMPLETED BY EMPLOYEE'S ATTENDING PHYSICIAN
THIS IS TO CERTIFY THAT ON _____ (MONTH-DAY-YEAR) I EXAMINED THE ABOVE NAMED INDIVIDUAL AND I APPROVE X, DO

NOT APPROVE _, HIM/HER FOR SICK LEAVE BEGINING [sic] ON 3-23-96, I ESTIMATE THAT THE PERIOD OF DISABILITY SHOULD NOT EXCEED 30 DAYS FROM THE BEGINNING DATE OF SICK LEAVE. THIS APPROVAL IS BASED ON THE FOLLOWING DIAGNOSIS:

_____

_____

_____

WHICH IS IN MY OPINION, IS THE PRIMARY CAUSE FOR APPLICANT'S NEED TO BE ABSENT FROM WORK.

/s/ [Illegible]
(PHYSICIAN'S SIGNATURE)
3-18-96
(DATE SIGNED)
800 So. Church Jonesboro, Ar. 932-1198
(PHYSICIAN'S OFFICE ADDRESS AND PHONE NUMBER)

NOTE: ***ABSENCE FROM WORK DUE TO ILLNESS/ DISABILITY AND FAILURE TO FURNISH THE INFORMATION REQUESTED ABOVE WILL RESULT IN TERMINATION.***
NO LEAVE OR EXTENSIONS THEREOF SHALL BE GRANTED FOR LONGER THAN THIRTY (30) DAYS AT ANY ONE TIME.
THIS FORM IS NOT A SUBSTITUTE FOR A RETURN TO WORK SLIP.

MEDICAL ARTS BUILDING

800 S. Church • Jonesboro, Arkansas 72401

[Doctor's Names Omitted In Printing]

[Handwritten Note From Doctor]

For Tracy Ragsdale
Address _____
Date 2/19/96
[LOGO] Ms. Ragdale has a probable lymphoma and should not work over 8 hrs. a day for the present. She is having surgery on 2/21 or 2/22.

LABEL AS TO CONTENT
/s/ [Illegible] M.D.
REPT UT DICT 1 2 3 4 5 TIMES P.R.N. [ ]
NON REP [ ]

APPROVED SICK LEAVE RECORD
EMPLOYEES OF FROLIC FOOTWEAR,
A DIVISION OF WOLVERINE WORLD WIDE, INC.

DATE 3-23-96

Tracy Ragsdale IS HEREWITH AUTHORIZED A 30 day (LENGTH/TIME) sick (TYPE) LEAVE PERIOD, ALL REQUIREMENTS BEING MET, FOR THE FOLLOWING REASONS: _____

_____

_____

SCHEDULED DATE TO RETURN TO WORK: 4-22-96

_____

/s/ Taressia Stinnett 3-18-96
(FOREMAN/DEPARTMENT SUPERVISOR) (DATE)

/s/ [Illegible]
(PLANT MANAGER) 3-18-96 (DATE)

/s/ Tracy Ragsdale (EMPLOYEE) 3-18-96 (DATE)

THE FOLLOWING POLICIES SHALL GOVERN ALL EXTENSIONS OF LEAVE PERIODS IN FORCE:

(1) NO LEAVE SHALL BE GRANTED FOR LONGER THAN THIRTY (30) DAYS AT ANY ONE TIME.

(2) IN ORDER FOR ANY LEAVE PERIOD TO BE EXTENDED IT SHALL BE NECESSARY FOR THE EMPLOYEE TO OBTAIN ANOTHER APPLICATION FOR SICK LEAVE FROM THE EMPLOYMENT OR PLANT OFFICE WITHIN THREE (3) DAYS PRIOR TO THE CONCLUSION OF THE CURRENT LEAVE PERIOD, AND MAKE WRITTEN APPLICATION FOR AN ADDITIONAL THIRTY (30) DAYS LEAVE PERIOD. THE APPLICATION FOR SICK LEAVE MUST BE COMPLETED, SIGNED AND DATED BY THE ATTENDING PHYSICIAN.

(3) THE APPLICATION FOR SICK LEAVE MUST BE RETURNED WITHIN THREE (3) SCHEDULED WORK DAYS OF THE CONCLUSION OF THE CURRENT SICK LEAVE PERIOD.

(4) ANOTHER COPY OF A COMPLETED APPROVED LEAVE RECORD, SIGNED AND DATED BY THE PLANT MANAGER AND FOREMAN OR SUPERVISOR, MUST BE OBTAINED BY THE EMPLOYEE PRIOR TO FINAL APPROVAL OF THE EXTENSION TO THE LEAVE.

(5) SHOULD THE EMPLOYEE FAIL TO EXTEND SICK LEAVE AS ENUMERATED ABOVE, THE EMPLOYEE MUST REPORT FOR WORK AT 7:00 A.M. OF THE NEXT SCHEDULED WORK DAY FOLLOWING THE CONCLUSION OF THE LEAVE WITH A DOCTOR'S STATEMENT PRONOUNCING

THAT THE EMPLOYEE IS PHYSICALLY ABLE TO RETURN TO REGULAR WORK.

(6) IN THE EVENT A WRITTEN REQUEST FOR AN EXTENSION OF CURRENT LEAVE PERIOD IS NOT TIMELY AS ENUMERATED ABOVE, THE EMPLOYEE SHALL AUTOMATICALLY TERMINATE HIMSELF WITH LOSS OF ALL JOB RIGHTS AND PRIVILEGES. REASON STATED WILL BE LISTED AS VOLUNTARILY QUIT. ANY LEAVE OBTAINED BY FRAUD WILL RESULT IN TERMINATION FROM EMPLOYMENT.

APPLICATION FOR SICK LEAVE
EMPLOYEES OF FROLIC FOOTWEAR,
A DIVISION OF WOLVERINE WORLD WIDE, INC.

THIS FORM MUST BE FULLY COMPLETED AND SIGNED BY THE EMPLOYEE AND ATTENDING PHYSICIAN AND DELIVERED TO THE EMPLOYMENT OFFICE OF THE PLANT WHERE EMPLOYEE WORKS WITHIN THREE (3) WORK DAYS FROM INITIAL ABSENCE CAUSED BY ILLNESS/DISABILITY OR WITHIN THREE (3) SCHEDULED WORK DAYS FOLLOWING END OF INITIAL SICK LEAVE FOR AN EXTENSION.

I. TO BE COMPLETED BY EMPLOYEE
NAME OF EMPLOYEE Tracy Ragsdale
CLOCK NO. ___
DEPARTMENT _____
HOME ADDRESS _____ (STREET)
(CITY, STATE AND ZIP)
TELEPHONE NUMBER WHERE YOU CAN BE REACHED _____

I HEREBY APPLY FOR SICK LEAVE AND AUTHORIZE MY PERSONAL DOCTOR TO FURNISH ANY MEDICAL INFORMATION TO MY EMPLOYER, EMPLOYER'S INSURANCE COMPANY OR COMPANY NURSE THAT MAY BE REQUESTED DURING THE TERM OF THIS ILLNESS OR DISABILITY.

_____
(EMPLOYEE SIGNATURE)

_____
(DATE SIGNED)

II. TO BE COMPLETED BY EMPLOYEE'S ATTENDING PHYSICIAN
THIS IS TO CERTIFY THAT ON 2-12-96 (MONTH-DAY-YEAR) I EXAMINED THE ABOVE NAMED INDIVIDUAL AND I APPROVE X, DO NOT APPROVE _, HIM/HER (CIRCLED) FOR SICK LEAVE BEGINING [sic] ON 4-22-96, I ESTIMATE THAT THE PERIOD OF DISABILITY SHOULD NOT EXCEED 30 DAYS [unknown at this time] FROM THE BEGINNING DATE OF SICK LEAVE. THIS APPROVAL IS BASED ON THE FOLLOWING DIAGNOSIS:
Lymphoma

WHICH IS IN MY OPINION, IS THE PRIMARY CAUSE FOR APPLICANT'S NEED TO BE ABSENT FROM WORK.
/s/ [Illegible]
(PHYSICIANS SIGNATURE)
4-18-96
(DATE SIGNED)
800 So. Church Suite 400 Jonesboro, Ar. 72401
(PHYSICIAN'S OFFICE ADDRESS AND PHONE NUMBER)

NOTE: ABSENCE FROM WORK DUE TO ILLNESS/ DISABILITY AND FAILURE TO FURNISH THE INFORMATION REQUESTED ABOVE WILL RESULT IN TERMINATION.
NO LEAVE OR EXTENSIONS THEREOF SHALL BE GRANTED FOR LONGER THAN THIRTY (30) DAYS AT ANY ONE TIME.
THIS FORM IS NOT A SUBSTITUTE FOR A RETURN TO WORK SLIP.

APPROVED SICK LEAVE RECORD
EMPLOYEES OF FROLIC FOOTWEAR,
A DIVISION OF WOLVERINE WORLD WIDE, INC.

DATE 4-22-96

Tracy Ragsdale IS HEREWITH AUTHORIZED A 30 day (LENGTH/TIME) sick (TYPE) LEAVE PERIOD, ALL REQUIREMENTS BEING MET, FOR THE FOLLOWING REASONS: _____

_____

_____

SCHEDULED DATE TO RETURN TO WORK: 5-22-96

_____
/s/ Taressia Stinnett 4-22-96
(FOREMAN/DEPARTMENT SUPERVISOR) (DATE)

/s/ Gene Cook
(PLANT MANAGER) 4-22-96 (DATE)

_____ (EMPLOYEE) _____ (DATE)

Mailed 4-22-96

THE FOLLOWING POLICIES SHALL GOVERN ALL EXTENSIONS OF LEAVE PERIODS IN FORCE:

(1) NO LEAVE SHALL BE GRANTED FOR LONGER THAN THIRTY (30) DAYS AT ANY ONE TIME.

(2) IN ORDER FOR ANY LEAVE PERIOD TO BE EXTENDED IT SHALL BE NECESSARY FOR THE EMPLOYEE TO OBTAIN ANOTHER APPLICATION FOR SICK LEAVE FROM THE EMPLOYMENT OR PLANT OFFICE WITHIN THREE (3) DAYS PRIOR TO THE CONCLUSION OF THE CURRENT LEAVE PERIOD, AND MAKE WRITTEN APPLICATION FOR AN ADDITIONAL THIRTY (30) DAYS LEAVE PERIOD. THE APPLICATION FOR SICK LEAVE MUST BE COMPLETED, SIGNED AND DATED BY THE ATTENDING PHYSICIAN.

(3) THE APPLICATION FOR SICK LEAVE MUST BE RETURNED WITHIN THREE (3) SCHEDULED WORK DAYS OF THE CONCLUSION OF THE CURRENT SICK LEAVE PERIOD.

(4) ANOTHER COPY OF A COMPLETED APPROVED LEAVE RECORD, SIGNED AND DATED BY THE PLANT MANAGER AND FOREMAN OR SUPERVISOR, MUST BE OBTAINED BY THE EMPLOYEE PRIOR TO FINAL APPROVAL OF THE EXTENSION TO THE LEAVE.

(5) SHOULD THE EMPLOYEE FAIL TO EXTEND SICK LEAVE AS ENUMERATED ABOVE, THE EMPLOYEE MUST REPORT FOR WORK AT 7:00 A.M. OF THE NEXT SCHEDULED WORK DAY FOLLOWING THE CONCLUSION OF THE LEAVE WITH A DOCTOR'S STATEMENT PRONOUNCING THAT THE EMPLOYEE IS PHYSICALLY ABLE TO RETURN TO REGULAR WORK.

(6) IN THE EVENT A WRITTEN REQUEST FOR AN EXTENSION OF CURRENT LEAVE PERIOD IS NOT TIMELY AS ENUMERATED ABOVE, THE EMPLOYEE SHALL AUTOMATICALLY TERMINATE HIMSELF WITH LOSS OF ALL JOB RIGHTS AND PRIVILEGES. REASON STATED WILL BE LISTED AS VOLUNTARILY QUIT. ANY LEAVE OBTAINED BY FRAUD WILL RESULT IN TERMINATION FROM EMPLOYMENT.

APPLICATION FOR SICK LEAVE
EMPLOYEES OF FROLIC FOOTWEAR,
A DIVISION OF WOLVERINE WORLD WIDE, INC.

THIS FORM MUST BE FULLY COMPLETED AND SIGNED BY THE EMPLOYEE AND ATTENDING PHYSICIAN AND DELIVERED TO THE EMPLOYMENT OFFICE OF THE PLANT WHERE EMPLOYEE WORKS WITHIN THREE (3) WORK DAYS FROM INITIAL ABSENCE CAUSED BY ILLNESS/DISABILITY OR WITHIN THREE (3) SCHEDULED WORK DAYS FOLLOWING END OF INITIAL SICK LEAVE FOR AN EXTENSION.

I. TO BE COMPLETED BY EMPLOYEE
NAME OF EMPLOYEE Tracy Lynn Ragsdale
CLOCK NO. 79032
DEPARTMENT Fitting
HOME ADDRESS P.O. Box 115 (STREET)
Black Rock, AR 72415 (CITY, STATE AND ZIP)
TELEPHONE NUMBER WHERE YOU CAN BE REACHED 878-6361
I HEREBY APPLY FOR SICK LEAVE AND AUTHORIZE MY PERSONAL DOCTOR TO FURNISH ANY MEDICAL INFORMATION TO MY EMPLOYER,

EMPLOYER'S INSURANCE COMPANY OR COMPANY NURSE THAT MAY BE REQUESTED DURING THE TERM OF THIS ILLNESS OR DISABILITY.
/s/ Tracy L. Ragsdale
(EMPLOYEE SIGNATURE)
5/21/96
(DATE SIGNED)

II. TO BE COMPLETED BY EMPLOYEE'S ATTENDING PHYSICIAN
THIS IS TO CERTIFY THAT ON 5-21-96 (MONTH-DAY-YEAR) I EXAMINED THE ABOVE NAMED INDIVIDUAL AND I APPROVE X, DO NOT APPROVE _, HIM/HER FOR SICK LEAVE BEGINING [sic] ON 5/22/96, I ESTIMATE THAT THE PERIOD OF DISABILITY SHOULD NOT EXCEED 30 DAYS FORM THE BEGINNING DATE OF SICK LEAVE. THIS APPROVAL IS BASED ON THE FOLLOWING DIAGNOSIS:

_____

_____

_____

WHICH IS IN MY OPINION, IS THE PRIMARY CAUSE FOR APPLICANT'S NEED TO BE ABSENT FROM WORK.
/s/ [Illegible]
(PHYSICIANS SIGNATURE)
5/21/96
(DATE SIGNED)
800 So. Church Suite 400 Jonesboro, Ar. 72401
932-9028
(PHYSICIAN'S OFFICE ADDRESS AND PHONE NUMBER)

NOTE: ABSENCE FROM WORK DUE TO ILLNESS/ DISABILITY AND FAILURE TO FURNISH THE INFORMATION REQUESTED ABOVE WILL RESULT IN TERMINATION.

NO LEAVE OR EXTENSIONS THEREOF SHALL BE GRANTED FOR LONGER THAN THIRTY (30) DAYS AT ANY ONE TIME. THIS FORM IS NOT A SUBSTITUTE FOR A RETURN TO WORK SLIP.

APPROVED SICK LEAVE RECORD
EMPLOYEES OF FROLIC FOOTWEAR,
A DIVISION OF WOLVERINE WORLD WIDE, INC.

DATE 5-22-96

Tracy Ragsdale IS HEREWITH AUTHORIZED A 30 day (LENGTH/TIME) _____ (TYPE) LEAVE PERIOD, ALL REQUIREMENTS BEING MET, FOR THE FOLLOWING REASONS: _____

_____

_____

SCHEDULED DATE TO RETURN TO WORK: 6-21-96

_____

/s/ Taressia Stinnett
(FOREMAN/DEPARTMENT SUPERVISOR) 5-22-96 (DATE)

/s/ Gene Cook
(PLANT MANAGER) 5-22-96 (DATE)

/s/ Tracy Ragsdale (EMPLOYEE) 5-22-96 (DATE)

THE FOLLOWING POLICIES SHALL GOVERN ALL EXTENSIONS OF LEAVE PERIODS IN FORCE:

(1) NO LEAVE SHALL BE GRANTED FOR LONGER THAN THIRTY (30) DAYS AT ANY ONE TIME.

(2) IN ORDER FOR ANY LEAVE PERIOD TO BE EXTENDED IT SHALL BE NECESSARY FOR THE EMPLOYEE TO OBTAIN ANOTHER APPLICATION

FOR SICK LEAVE FROM THE EMPLOYMENT OR PLANT OFFICE WITHIN THREE (3) DAYS PRIOR TO THE CONCLUSION OF THE CURRENT LEAVE PERIOD, AND MAKE WRITTEN APPLICATION FOR AN ADDITIONAL THIRTY (30) DAYS LEAVE PERIOD. THE APPLICATION FOR SICK LEAVE MUST BE COMPLETED, SIGNED AND DATED BY THE ATTENDING PHYSICIAN.

(3) THE APPLICATION FOR SICK LEAVE MUST BE RETURNED WITHIN THREE (3) SCHEDULED WORK DAYS OF THE CONCLUSION OF THE CURRENT SICK LEAVE PERIOD.

(4) ANOTHER COPY OF A COMPLETED APPPOVED LEAVE RECORD, SIGNED AND DATED BY THE PLANT MANAGER AND FOREMAN OR SUPERVISOR, MUST BE OBTAINED BY THE EMPLOYEE PRIOR TO FINAL APPROVAL OF THE EXTENSION TO THE LEAVE.

(5) SHOULD THE EMPLOYEE FAIL TO EXTEND SICK LEAVE AS ENUMERATED ABOVE, THE EMPLOYEE MUST REPORT FOR WORK AT 7:00 A.M. OF THE NEXT SCHEDULED WORK DAY FOLLOWING THE CONCLUSION OF THE LEAVE WITH A DOCTOR'S STATEMENT PRONOUNCING THAT THE EMPLOYEE IS PHYSICALLY ABLE TO RETURN TO REGULAR WORK.

(6) IN THE EVENT A WRITTEN REQUEST FOR AN EXTENSION OF CURRENT LEAVE PERIOD IS NOT TIMELY AS ENUMERATED ABOVE, THE EMPLOYEE SHALL AUTOMATICALLY TERMINATE HIMSELF WITH LOSS OF ALL JOB RIGHTS AND PRIVILEGES. REASON STATED WILL BE LISTED AS VOLUNTARILY QUIT. ANY LEAVE OBTAINED BY FRAUD WILL RESULT IN TERMINATION FROM EMPLOYMENT.

APPLICATION FOR SICK LEAVE
EMPLOYEES OF FROLIC FOOTWEAR,
A DIVISION OF WOLVERINE WORLD WIDE, INC.

THIS FORM MUST BE FULLY COMPLETED AND SIGNED BY THE EMPLOYEE AND ATTENDING PHYSICIAN AND DELIVERED TO THE EMPLOYMENT OFFICE OF THE PLANT WHERE EMPLOYEE WORKS WITHIN THREE (3) WORK DAYS FROM INITIAL ABSENCE CAUSED BY ILLNESS/DISABILITY OR WITHIN THREE (3) SCHEDULED WORK DAYS FOLLOWING END OF INITIAL SICK LEAVE FOR AN EXTENSION.

I. TO BE COMPLETED BY EMPLOYEE
NAME OF EMPLOYEE Tracy Ragsdale
CLOCK NO. 79032
DEPARTMENT Fitting
HOME ADDRESS P.O. Box 115 (STREET)
Black Rock, AR 72415 (CITY, STATE AND ZIP)
TELEPHONE NUMBER WHERE YOU CAN BE REACHED (501) 878-6361
I HEREBY APPLY FOR SICK LEAVE AND AUTHORIZE MY PERSONAL DOCTOR TO FURNISH ANY MEDICAL INFORMATION TO MY EMPLOYER, EMPLOYER'S INSURANCE COMPANY OR COMPANY NURSE THAT MAY BE REQUESTED DURING THE TERM OF THIS ILLNESS OR DISABILITY.
/s/ Tracy L. Ragsdale
(EMPLOYEE SIGNATURE)

_____
(DATE SIGNED)

II. TO BE COMPLETED BY EMPLOYEE'S ATTENDING PHYSICIAN
THIS IS TO CERTIFY THAT ON 6-18-96 (MONTH-DAY-YEAR) I EXAMINED THE ABOVE NAMED INDIVIDUAL AND I APPROVE X, DO NOT

APPROVE _, HIM/HER FOR SICK LEAVE BEGINING [sic] ON 6-20-96, I ESTIMATE THAT THE PERIOD OF DISABILITY SHOULD NOT EXCEED 30 DAYS FROM THE BEGINNING DATE OF SICK LEAVE. THIS APPROVAL IS BASED ON THE FOLLOWING DIAGNOSIS:
[Illegible] Hodgkins Disease [Illegible]
WHICH IS IN MY OPINION, IS THE PRIMARY CAUSE FOR APPLICANT'S NEED TO BE ABSENT FROM WORK.
/s/ [Illegible]
(PHYSICIAN'S SIGNATURE)
6-18-96
(DATE SIGNED)
224 East Matthews, Jonesboro, AR 72401
501-972-4510
(PHYSICIAN'S OFFICE ADDRESS AND PHONE NUMBER)

NOTE: ABSENCE FROM WORK DUE TO ILLNESS/ DISABILITY AND FAILURE TO FURNISH THE INFORMATION REQUESTED ABOVE WILL RESULT IN TERMINATION.
NO LEAVE OR EXTENSIONS THEREOF SHALL BE GRANTED FOR LONGER THAN THIRTY (30) DAYS AT ANY ONE TIME.
THIS FORM IS NOT A SUBSTITUTE FOR A RETURN TO WORK SLIP.

APPROVED SICK LEAVE RECORD
EMPLOYEES OF FROLIC FOOTWEAR,
A DIVISION OF WOLVERINE WORLD WIDE, INC.

DATE 6-20-96

Tracy Ragsdale IS HEREWITH AUTHORIZED A 30 day (LENGTH/TIME) sick (TYPE) LEAVE PERIOD, ALL REQUIREMENTS BEING MET, FOR THE FOLLOWING REASONS: _____

_____

_____

SCHEDULED DATE TO RETURN TO WORK: 7-22-96

_____

/s/ _____ _____
(FOREMAN/DEPARTMENT SUPERVISOR) (DATE)

/s/ Gene Cook
(PLANT MANAGER) 6-21-96 (DATE)

/s/ Tracy Ragsdale (EMPLOYEE) 6-21-96 (DATE)

THE FOLLOWING POLICIES SHALL GOVERN ALL EXTENSIONS OF LEAVE PERIODS IN FORCE:

(1) NO LEAVE SHALL BE GRANTED FOR LONGER THAN THIRTY (30) DAYS AT ANY ONE TIME.

(2) IN ORDER FOR ANY LEAVE PERIOD TO BE EXTENDED IT SHALL BE NECESSARY FOR THE EMPLOYEE TO OBTAIN ANOTHER APPLICATION FOR SICK LEAVE FROM THE EMPLOYMENT OR PLANT OFFICE WITHIN THREE (3) DAYS PRIOR TO THE CONCLUSION OF THE CURRENT LEAVE PERIOD, AND MAKE WRITTEN APPLICATION FOR AN ADDITIONAL THIRTY (30) DAYS LEAVE PERIOD. THE APPLICATION FOR SICK LEAVE MUST BE COMPLETED, SIGNED AND DATED BY THE ATTENDING PHYSICIAN.

(3) THE APPLICATION FOR SICK LEAVE MUST BE RETURNED WITHIN THREE (3) SCHEDULED WORK DAYS OF THE CONCLUSION OF THE CURRENT SICK LEAVE PERIOD.

(4) ANOTHER COPY OF A COMPLETED APPROVED LEAVE RECORD, SIGNED AND DATED BY THE PLANT MANAGER AND FOREMAN OR SUPERVISOR, MUST BE OBTAINED BY THE EMPLOYEE PRIOR TO FINAL APPROVAL OF THE EXTENSION TO THE LEAVE.

(5) SHOULD THE EMPLOYEE FAIL TO EXTEND SICK LEAVE AS ENUMERATED ABOVE, THE EMPLOYEE MUST REPORT FOR WORK AT 7:00 A.M. OF THE NEXT SCHEDULED WORK DAY FOLLOWING THE CONCLUSION OF THE LEAVE WITH A DOCTOR'S STATEMENT PRONOUNCING THAT THE EMPLOYEE IS PHYSICALLY ABLE TO RETURN TO REGULAR WORK.

(6) IN THE EVENT A WRITTEN REQUEST FOR AN EXTENSION OF CURRENT LEAVE PERIOD IS NOT TIMELY AS ENUMERATED ABOVE, THE EMPLOYEE SHALL AUTOMATICALLY TERMINATE HIMSELF WITH LOSS OF ALL JOB RIGHTS AND PRIVILEGES. REASON STATED WILL BE LISTED AS VOLUNTARILY QUIT. ANY LEAVE OBTAINED BY FRAUD WILL RESULT IN TERMINATION FROM EMPLOYMENT.

APPLICATION FOR SICK LEAVE
EMPLOYEES OF FROLIC FOOTWEAR,
A DIVISION OF WOLVERINE WORLD WIDE, INC.

THIS FORM MUST BE FULLY COMPLETED AND SIGNED BY THE EMPLOYEE AND ATTENDING PHYSICIAN AND DELIVERED TO THE EMPLOYMENT OFFICE OF THE PLANT WHERE EMPLOYEE WORKS WITHIN THREE (3) WORK DAYS FROM INITIAL ABSENCE CAUSED BY ILLNESS/DISABILITY OR WITHIN THREE (3) SCHEDULED WORK DAYS FOLLOWING END OF INITIAL SICK LEAVE FOR AN EXTENSION.

I. TO BE COMPLETED BY EMPLOYEE
NAME OF EMPLOYEE Tracy Lynn Ragsdale
CLOCK NO. _____
DEPARTMENT _____
HOME ADDRESS P.O. Box 115 (STREET)
Black Rock, AR 72415 (CITY, STATE AND ZIP)
TELEPHONE NUMBER WHERE YOU CAN BE REACHED 501-878-6361
I HEREBY APPLY FOR SICK LEAVE AND AUTHORIZE MY PERSONAL DOCTOR TO FURNISH ANY MEDICAL INFORMATION TO MY EMPLOYER, EMPLOYER'S INSURANCE COMPANY OR COMPANY NURSE THAT MAY BE REQUESTED DURING THE TERM OF THIS ILLNESS OR DISABILITY.

_____
(EMPLOYEE SIGNATURE)

_____
(DATE SIGNED)

II. TO BE COMPLETED BY EMPLOYEE'S ATTENDING PHYSICIAN
THIS IS TO CERTIFY THAT ON 04/30/96 (MONTH-DAY-YEAR) I EXAMINED THE ABOVE NAMED INDIVIDUAL AND I APPROVE X, DO NOT

APPROVE _, HIM/HER FOR SICK LEAVE BEGINING [sic] ON ~~11/30/96~~ 07/22/96, I ESTIMATE THAT THE PERIOD OF DISABILITY SHOULD NOT EXCEED ~~120~~ 30 DAYS FROM THE BEGINNING DATE OF SICK LEAVE. THIS APPROVAL IS BASED ON THE FOLLOWING DIAGNOSIS:
[Illegible] one hundred twenty day Hodgkins Disease, Stage IIA
WHICH IS IN MY OPINION, IS THE PRIMARY CAUSE FOR APPLICANT'S NEED TO BE ABSENT FROM WORK.
/s/ John K. Lynch
07/19/96
(DATE SIGNED)
LOVERD M. PEACOCK, MD
JOHN K LYNCH, DO
P.O. BOX 719
JONESBORO, ARKANSAS 72402
(PHYSICIAN'S OFFICE ADDRESS AND PHONE NUMBER)

NOTE: ABSENCE FROM WORK DUE TO ILLNESS/ DISABILITY AND FAILURE TO FURNISH THE INFORMATION REQUESTED ABOVE WILL RESULT IN TERMINATION.
NO LEAVE OR EXTENSIONS THEREOF SHALL BE GRANTED FOR LONGER THAN THIRTY (30) DAYS AT ANY ONE TIME.
THIS FORM IS NOT A SUBSTITUTE FOR A RETURN TO WORK SLIP.

APPROVED SICK LEAVE RECORD
EMPLOYEES OF FROLIC FOOTWEAR,
A DIVISION OF WOLVERINE WORLD WIDE, INC.

DATE 7-22-96

Tracy Ragsdale IS HEREWITH AUTHORIZED A 30 day (LENGTH/TIME) sick (TYPE) LEAVE PERIOD, ALL REQUIREMENTS BEING MET, FOR THE FOLLOWING REASONS: _____

_____

_____

SCHEDULED DATE TO RETURN TO WORK: 8-21-96

_____

/s/ Taressia Stinnett 7-24-96
(FOREMAN/DEPARTMENT SUPERVISOR) (DATE)

/s/ Gene Cook 7-24-96
(PLANT MANAGER) (DATE)

/s/ Tracy Ragsdale (EMPLOYEE) 7-24-96 (DATE)

THE FOLLOWING POLICIES SHALL GOVERN ALL EXTENSIONS OF LEAVE PERIODS IN FORCE:

(1) NO LEAVE SHALL BE GRANTED FOR LONGER THAN THIRTY (30) DAYS AT ANY ONE TIME.

(2) IN ORDER FOR ANY LEAVE PERIOD TO BE EXTENDED IT SHALL BE NECESSARY FOR THE EMPLOYEE TO OBTAIN ANOTHER APPLICATION FOR SICK LEAVE FROM THE EMPLOYMENT OR PLANT OFFICE WITHIN THREE (3) DAYS PRIOR TO THE CONCLUSION OF THE CURRENT LEAVE PERIOD, AND MAKE WRITTEN APPLICATION FOR AN ADDITIONAL THIRTY (30) DAYS LEAVE PERIOD. THE APPLICATION FOR SICK LEAVE MUST BE COMPLETED, SIGNED AND DATED BY THE ATTENDING PHYSICIAN.

(3) THE APPLICATION FOR SICK LEAVE MUST BE RETURNED WITHIN THREE (3) SCHEDULED WORK DAYS OF THE CONCLUSION OF THE CURRENT SICK LEAVE PERIOD.

(4) ANOTHER COPY OF A COMPLETED APPROVED LEAVE RECORD, SIGNED AND DATED BY THE PLANT MANAGER AND FOREMAN OR SUPERVISOR, MUST BE OBTAINED BY THE EMPLOYEE PRIOR TO FINAL APPROVAL OF THE EXTENSION TO THE LEAVE.

(5) SHOULD THE EMPLOYEE FAIL TO EXTEND SICK LEAVE AS ENUMERATED ABOVE, THE EMPLOYEE MUST REPORT FOR WORK AT 7:00 A.M. OF THE NEXT SCHEDULED WORK DAY FOLLOWING THE CONCLUSION OF THE LEAVE WITH A DOCTOR'S STATEMENT PRONOUNCING THAT THE EMPLOYEE IS PHYSICALLY ABLE TO RETURN TO REGULAR WORK.

(6) IN THE EVENT A WRITTEN REQUEST FOR AN EXTENSION OF CURRENT LEAVE PERIOD IS NOT TIMELY AS ENUMERATED ABOVE, THE EMPLOYEE SHALL AUTOMATICALLY TERMINATE HIMSELF WITH LOSS OF ALL JOB RIGHTS AND PRIVILEGES. REASON STATED WILL BE LISTED AS VOLUNTARILY QUIT. ANY LEAVE OBTAINED BY FRAUD WILL RESULT IN TERMINATION FROM EMPLOYMENT.

APPLICATION FOR SICK LEAVE
EMPLOYEES OF FROLIC FOOTWEAR,
A DIVISION OF WOLVERINE WORLD WIDE, INC.

THIS FORM MUST BE FULLY COMPLETED AND SIGNED BY THE EMPLOYEE AND ATTENDING PHYSICIAN AND DELIVERED TO THE EMPLOYMENT OFFICE OF THE PLANT WHERE EMPLOYEE WORKS WITHIN THREE (3) WORK DAYS FROM INITIAL ABSENCE CAUSED BY ILLNESS/DISABILITY OR WITHIN THREE (3) SCHEDULED WORK DAYS FOLLOWING END OF INITIAL SICK LEAVE FOR AN EXTENSION.

I. TO BE COMPLETED BY EMPLOYEE
NAME OF EMPLOYEE Tracy Ragsdale
CLOCK NO. 79032
DEPARTMENT Fitting
HOME ADDRESS P.O. Box 115 (STREET)
Black Rock, AR 72415 (CITY, STATE AND ZIP)
TELEPHONE NUMBER WHERE YOU CAN BE REACHED 878-6361
I HEREBY APPLY FOR SICK LEAVE AND AUTHORIZE MY PERSONAL DOCTOR TO FURNISH ANY MEDICAL INFORMATION TO MY EMPLOYER, EMPLOYER'S INSURANCE COMPANY OR COMPANY NURSE THAT MAY BE REQUESTED DURING THE TERM OF THIS ILLNESS OR DISABILITY.
/s/ Tracy Ragsdale
(EMPLOYEE SIGNATURE)
8-15-96
(DATE SIGNED)

II. TO BE COMPLETED BY EMPLOYEE'S ATTENDING PHYSICIAN
THIS IS TO CERTIFY THAT ON 08/21/96 (MONTH-DAY-YEAR) I EXAMINED THE ABOVE NAMED INDIVIDUAL AND I APPROVE X, DO NOT

APPROVE _, HIM/HER FOR SICK LEAVE BEGINING [sic] ON 08/21/96, I ESTIMATE THAT THE PERIOD OF DISABILITY SHOULD NOT EXCEED 30 DAYS FROM THE BEGINNING DATE OF SICK LEAVE. THIS APPROVAL IS BASED ON THE FOLLOWING DIAGNOSIS:
Hodgkin's Disease
WHICH IS IN MY OPINION, IS THE PRIMARY CAUSE FOR APPLICANT'S NEED TO BE ABSENT FROM WORK.
/s/ [Illegible]
08/08/96
(DATE SIGNED)
LOVERD M. PEACOCK, MD
JOHN K. LYNCH, DO
P.O. BOX 719,
JONESBORO, ARKANSAS 72401
501-972-4510
(PHYSICIAN'S OFFICE ADDRESS AND PHONE NUMBER)

NOTE: ABSENCE FROM WORK DUE TO ILLNESS/ DISABILITY AND FAILURE TO FURNISH THE INFORMATION REQUESTED ABOVE WILL RESULT IN TERMINATION.
NO LEAVE OR EXTENSIONS THEREOF SHALL BE GRANTED FOR LONGER THAN THIRTY (30) DAYS AT ANY ONE TIME.
THIS FORM IS NOT A SUBSTITUTE FOR A RETURN TO WORK SLIP.

APPROVED SICK LEAVE RECORD
EMPLOYEES OF FROLIC FOOTWEAR,
A DIVISION OF WOLVERINE WORLD WIDE, INC.

DATE 8-21-96

Tracy Ragsdale IS HEREWITH AUTHORIZED A 30 day (LENGTH/TIME) sick (TYPE) LEAVE PERIOD, ALL REQUIREMENTS BEING MET, FOR THE FOLLOWING REASONS: _____

_____

_____

SCHEDULED DATE TO RETURN TO WORK: 9-20-96

_____

/s/ _____ _____
(FOREMAN/DEPARTMENT SUPERVISOR) (DATE)

/s/ Gene Cook
(PLANT MANAGER) 8-15-96 (DATE)

/s/ Tracy Ragsdale (EMPLOYEE) 8-15-96 (DATE)
Susan Malone

THE FOLLOWING POLICIES SHALL GOVERN ALL EXTENSIONS OF LEAVE PERIODS IN FORCE:

(1) NO LEAVE SHALL BE GRANTED FOR LONGER THAN THIRTY (30) DAYS AT ANY ONE TIME.

(2) IN ORDER FOR ANY LEAVE PERIOD TO BE EXTENDED IT SHALL BE NECESSARY FOR THE EMPLOYEE TO OBTAIN ANOTHER APPLICATION FOR SICK LEAVE FROM THE EMPLOYMENT OR PLANT OFFICE WITHIN THREE (3) DAYS PRIOR TO THE CONCLUSION OF THE CURRENT LEAVE PERIOD, AND MAKE WRITTEN APPLICATION FOR AN ADDITIONAL THIRTY (30) DAYS LEAVE PERIOD. THE APPLICATION FOR SICK LEAVE

MUST BE COMPLETED, SIGNED AND DATED BY THE ATTENDING PHYSICIAN.

(3) THE APPLICATION FOR SICK LEAVE MUST BE RETURNED WITHIN THREE (3) SCHEDULED WORK DAYS OF THE CONCLUSION OF THE CURRENT SICK LEAVE PERIOD.

(4) ANOTHER COPY OF A COMPLETED APPROVED LEAVE RECORD, SIGNED AND DATED BY THE PLANT MANAGER AND FOREMAN OR SUPERVISOR, MUST BE OBTAINED BY THE EMPLOYEE PRIOR TO FINAL APPROVAL OF THE EXTENSION TO THE LEAVE.

(5) SHOULD THE EMPLOYEE FAIL TO EXTEND SICK LEAVE AS ENUMERATED ABOVE, THE EMPLOYEE MUST REPORT FOR WORK AT 7:00 A.M. OF THE NEXT SCHEDULED WORK DAY FOLLOWING THE CONCLUSION OF THE LEAVE WITH A DOCTOR'S STATEMENT PRONOUNCING THAT THE EMPLOYEE IS PHYSICALLY ABLE TO RETURN TO REGULAR WORK.

(6) IN THE EVENT A WRITTEN REQUEST FOR AN EXTENSION OF CURRENT LEAVE PERIOD IS NOT TIMELY AS ENUMERATED ABOVE, THE EMPLOYEE SHALL AUTOMATICALLY TERMINATE HIMSELF WITH LOSS OF ALL JOB RIGHTS AND PRIVILEGES. REASON STATED WILL BE LISTED AS VOLUNTARILY QUIT. ANY LEAVE OBTAINED BY FRAUD WILL RESULT IN TERMINATION FROM EMPLOYMENT.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

TRACY RAGSDALE, Plaintiff, VS. WOLVERINE WORLD WIDE, INC. d/b/a Frolic Footwear, Defendant.	)	Case No. NO. J-C-97-475

AFFIDAVIT OF ROBERT H. SMITH

(FILED JUL. 29 1998)

STATE OR ARKANSAS

COUNTY OF CRAIGHEAD

1. My name is Robert H. Smith. I am over the age of 21 and otherwise competent to testify. I am employed by Wolverine World Wide, Inc., at its Jonesboro, Arkansas plant as Director of Human Resources for its Frolic Footwear Division.

2. I am familiar with and responsible for all Company personnel and payroll records. Ms. Ragsdale was hired on March 17, 1995.

3. On February 21, 1996, Tracy Ragsdale requested medical (sick) leave. This request was granted pursuant

to the Company's leave policy and Plaintiff commenced her leave on February 21, 1996.

4. At the commencement of this leave, Ms. Ragsdale had not worked for Wolverine World Wide, Inc. for 12 months.

5. Wolverine World Wide, Inc.'s medical (sick) leave policy allowed employees with six (6) months service to take medical (sick) leave for up to seven (7) months.

6. After the commencement of her leave on February 21, 1996, Ms. Ragsdale continued on leave for seven (7) consecutive months, through September 10, 1996, when her employment was terminated.

7. Wolverine World Wide's leave policy requires that at least every thirty (30) days, employees on medical (sick) leave submit a request for an extension of leave signed by the attending physician explaining the need for the extension of the leave. This process is explained in the leave of absence section of the employee handbook and on the leave application.

8. Wolverine World Wide continues health insurance and pays the premiums on the health insurance for the first six months of leave. For the first six months of Ms. Ragsdale's leave, Wolverine World Wide continued to provide Ms. Ragsdale with health insurance, paying the premiums as provided by its policy.

9. Ms. Ragsdale first requested FMLA leave after she had been notified that her employment was terminated on September 20, 1996. At this time Ms. Ragsdale was informed that she was not eligible for FMLA, and to

the extent she was, it had been incorporated within her Company provided leave.

Further, Affiant sayeth not.

/s/ Robert H. Smith
ROBERT H. SMITH

SWORN TO AND SUBSCRIBED TO this 29th day of July, 1998.

OFFICIAL SEAL
ANGELA E. SPEED
NOTARY PUBLIC
ARKANSAS
CRAIGHEAD COUNTY
MY COMMISSION
EXPIRES 10-27-2005

/s/ Angela E. Speed
NOTARY PUBLIC

My Commission expires:

10-27-2005

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

TRACY RAGSDALE, Plaintiff, VS. WOLVERINE WORLD WIDE, INC. d/b/a/ Frolic Footwear, Defendant.	)	Case No. NO. J-C-97-475

DEFENDANT'S STATEMENT OF ADDITIONAL UNDISPUTED MATERIAL FACTS

(Filed JUL. 29, 1998)

Pursuant to Local Rule 56.1, Defendant hereby submits the following Statement of Additional Undisputed Material Facts.

1. Plaintiff was hired on March 17, 1995 (*see* Depo. of Plaintiff, at 21; Exhibit 1 to Depo. of Plaintiff; Affidavit of Robert H. Smith).

2. Pursuant to the Company's medical (sick) leave policy, Plaintiff was entitled to seven (7) months (30 weeks) of Company-provided sick leave after six months of service (*see* Affidavit of Robert H. Smith).

3. Under the medical (sick) leave policy, Plaintiff could request a leave for up to thirty (30) days at a time.

Thereafter, the leave could be extended for thirty (30) days at a time, provided the Plaintiff presented the Company with a leave request signed by her attending physicians stating a need for the extension (*see* Exhibit 8 to Depo. of Plaintiff; Affidavit of Robert H. Smith).

4. Pursuant to the medical (sick) leave policy, on February 21, 1996 Plaintiff requested sick leave, and the leave commenced of February 21, 1996 (*see* Depo. of Plaintiff, at 29-30, 36; Exhibit 8 to Depo. of Plaintiff; Affidavit of Robert H. Smith).

5. Pursuant to the medical (sick) leave policy, on or about the following dates, March 18, 1996, April 22, 1996, May 21, 1996, June 20, 1996, July 22, 1996, and August 15, 1996, Plaintiff requested 30-day extensions of the leave which initially began on February 21, 1996 (*see* Exhibit 8 to Depo. of Plaintiff).

6. On each of the occasions listed in paragraph 5 above, Plaintiff's leave was extended for an additional 30-day period, in accordance with the medical (sick) leave policy (*see* Exhibit 8 to Depo. of Plaintiff).

7. Therefore, Plaintiff was off on medical (sick) leave for seven (7) months in accordance with the sick leave policy, from February 21, 1996 until Plaintiff's termination on September 20, 1996 (*see* Depo. of Plaintiff, at 43, 50-51; Affidavit of Robert H. Smith).

8. After Plaintiff had been on sick leave seven (7) months, she was notified that her employment had been terminated (*see* Exhibit 9 to Depo. of Plaintiff; Affidavit of Robert H. Smith).

9. On February 21, 1996, Plaintiff had not been employed by Defendant for 12 months. At the time of Plaintiff's July 22, 1996 leave request she had not worked 1250 hours within the preceding 12 months. (*see* Depo. of Plaintiff, at 21; Affidavit of Robert H. Smith).

Respectfully submitted,

WEINTRAUB, STOCK, BENNETT, GRISHAM & UNDERWOOD, P.C.

/s/ Richard D. Bennett
RICHARD D. BENNETT
(BPR #13156)

/s/ Cecilia S. Barnes
CECILIA S. BARNES
(BPR #17244)
2560 One Commerce Square
Memphis, Tennessee 38103
901-526-0431

CERTIFICATE OF SERVICE

I do hereby certify that a copy of the foregoing has been sent via U.S. Mail, postage prepaid to Garland L. Watlington, 1009 S. Main, Jonesboro, Arkansas 72401 and L. Oneal Sutter, 11510 Fairview Road, Suite 200, P.O. Box 26321, Little Rock, Arkansas 72221 on this 29th day of July, 1998.

/s/ Richard D. Bennett
RICHARD D. BENNETT

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

TRACY RAGSDALE — PLAINTIFF

VS. — CASE NO. J-C-97-475

WOLVERINE WORLDWIDE, INC. d/b/a Frolic Footwear, A Foreign Corporation doing business In the State of Arkansas — DEFENDANTS

PLAINTIFF'S RESPONSE TO DEFENDANT'S STATEMENT OF ADDITIONAL UNDISPUTED MATERIAL FACTS

(FILED AUG 13 1998)

Plaintiff Tracy Ragsdale, by and through Counsel, responds to the Defendant's Statement of Additional Undisputed Facts as follows:

1. Plaintiff admits the allegations of Paragraph One.

2. Plaintiff admits the allegations of Paragraph Two.

3. Plaintiff admits the allegations of Paragraph Three.

4. Plaintiff admits that she began leave on February 21, 1996, but denies that this is the appropriate date from which to calculate her eligibility. Plaintiff denies all other allegations in Paragraph Four.

5. Plaintiff admits that she took leave on March 18, 1996; April 22, 1996; May 21, 1996; June 20, 1996; July 22, 1996; and August 15, 1996. But Plaintiff denies that the February 21, 1996 is the appropriate date from which to calculate eligibility.

6. Plaintiff admits the allegations of Paragraph Six.

7. Plaintiff admits the allegations of Paragraph Seven.

8. Plaintiff admits the allegations of Paragraph Eight.

9. Plaintiff admits that she took leave on March 18, 1996; April 22, 1996; May 21, 1996; June 20, 1996; July 22, 1996; and August 15, 1996. But Plaintiff denies that the February 21, 1996 is the appropriate date from which to calculate eligibility.

Respectfully submitted,

HARRILL & SUTTER, P.L.L.C.
Post Office Box 26321
Little Rock, Arkansas 72221
501/224-1050 FAX: 501/223-9136
Attorneys for the Plaintiff

By: /s/ L. Oneal Sutter
L. Oneal Sutter
Arkansas bar No. 95031

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was mailed on this, the 11 day of August to Mr. Richard Bennett, Weintraub, Stock, Bennett, Grisham & Underwood, P.C. One Commerce Square, Suite 2560, Memphis, Tennessee 38103 and to Garland L. Watlington, Attorney at Law, 1009 South Main Street, Jonesboro, Arkansas 72401.

/s/ L. Oneal Sutter
L. Oneal Sutter

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

TRACY RAGSDALE

V. NO. J-C-97-475

WOLVERINE WORLD-WIDE, INC d/b/a FROLIC FOOTWEAR — DEFENDANT

ORDER

(FILED NOV. 03, 1998)

Presently before the Court are Plaintiff and Defendant's cross-motions for summary judgment on Plaintiff's claims under the Family and Medical Leave Act and Defendant's motion for summary judgment on Plaintiff's claims under the Americans With Disabilities Act and the Arkansas Civil Rights Act.

I. Background

Plaintiff Tracy Ragsdale began her employment with Defendant Wolverine World Wide, Inc. on March 17, 1995. She was diagnosed with cancer in February of 1996, and requested medical leave from Defendant on February 21, 1996. Defendant granted her request, and her leave commenced on that date. Defendant did not notify Plaintiff of her eligibility under the Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601-2654 ("FMLA"), or her right to have leave designated as FMLA leave.

Defendant's company leave policy allowed employees with six months of service to take leave for up to seven months. The leave policy required employees on

leave to submit requests for extensions of leave of every thirty days. Consistent with that requirement, Plaintiff requested extensions of her leave on March 18, April 22, May 21, June 20, July 22 and August 15 of 1996. Each request for an extension was granted by Defendant. On September 20, 1996, Plaintiff was terminated because she had exhausted her seven months of company provided leave. On September 26, 1996 Plaintiff returned to Defendant's facility and requested additional FMLA leave. She was informed that she had exhausted all of her leave. Plaintiff then requested that she be allowed to return to work on a reduced hour schedule. Her request was denied.

Plaintiff's physician released her to work in December of 1996, and she has been actively employed in full-time positions since December 31, 1996. Plaintiff is no longer being treated for cancer and she is currently capable of working without restrictions.

On December 22, 1997, Plaintiff filed suit against Defendant alleging claims under the Family and Medical Leave Act, the American's with Disabilities Act of 1990, 42 U.S.C. § 12101, *et seq* ("ADA") and the Arkansas Civil Rights Act of 1993, Ark. Code Ann. § 16-123-101, *et seq* ("Arkansas Act"). Both Plaintiff and Defendant have filed motions for summary judgment with respect to the FMLA claim. Defendant has also filed a motion for summary judgment with respect to the ADA and Arkansas Act claims.[1]

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[1] Plaintiff's motion to voluntarily dismiss her disparate treatment claims, hostile environment claims, and FMLA retaliation claim is hereby granted.

II. Summary Judgment Standard

Summary judgment is appropriate when the Court finds that there is no genuine issue as to any material fact, and that the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The party opposing summary judgment may not rest on its pleadings but must present "significant probative evidence" demonstrating that a genuine dispute of material fact exists, and that the moving party is not entitled to judgment as a matter of law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). The Court must view these materials in the light most favorable to the nonmovant, drawing all reasonable inferences in the nonmovant's favor. *Id.* at 255. The moving party bears the initial burden of informing the court of the basis for the motion and of identifying those parts of the record which demonstrate absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 323. Once the moving party has met its burden, the nonmovant may not rely on conclusory allegations or mere conjecture, but rather must offer specific facts to support a verdict in its favor. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574 (1986) (construing Fed. R. Civ. P. 56(e)). As to any claim, or essential element thereof, for which the nonmoving party bears the burden of proof at trial, the nonmoving party must make a showing sufficient to establish the existence of that claim or element.

III. Discussion

A. Plaintiff's FMLA Claim

The FMLA provides eligible employees the benefit of leave time for family and medical emergencies. The FMLA provides that employers must allow employees up to twelve weeks of leave in a year if the leave is requested for one of the purposes specified in the statute, including an employee's "serious health condition that makes the employee unable to perform the functions of the position of such employee." 29 U.S.C. § 2612(a)(1)(D). At the end of the leave, the employee must be reinstated to his or her position or to a position equivalent in pay, benefits, and other terms and conditions of employment. *See* 29 U.S.C. § 2614(a)(1). In the present case, there is no dispute that Plaintiffs' bout with cancer was a "serious health condition" within the purview of the Act. There is also no dispute that Plaintiff provided proper notice to Defendant of her need for medical leave, and that Defendant was fully informed as to the nature of Plaintiff's condition so that Defendant could have determined Plaintiff's eligibility under the FMLA. Thus, the only issues to be determined are (1) whether Plaintiff was an eligible employee, and (2) whether Defendant violated the FMLA in failing to provide her with 12 additional weeks of FMLA leave and reinstatement.

1. *Plaintiff's Eligibility*

The FMLA defines the term "eligible employee" as one who has been employed (i) for at least 12 months by the employer with respect to whom leave was requested . . . ; and (ii) for at least 1,250 hours of service

with such employer during the previous 12-month period. 29 U.S.C. § 2611(2)(A). In other words, to be eligible an employee must have been employed "for at least 1,250 hours of service during the 12-month period immediately preceding the commencement of the leave." 29 C.F.R. 825.110(a)(2). When Plaintiff first requested leave on February 21, 1996, she had not been employed by Defendant for the requisite twelve-month period. Thus, she was ineligible. When Plaintiff subsequently requested an extension of her leave on March 18, 1996, she had met all of the requirements for eligibility under the FMLA.

Plaintiff contends that her eligibility under the FMLA should have been determined as of her March 18, 1996 request for leave. Defendant, on the other hand, argues that eligibility for FMLA leave must only be determined on the date that leave first commenced (in this instance February 21, 1996). Defendant contends that Plaintiff's March 18, 1996 request was merely a request for an extension of leave that had already commenced on February 21, 1996. Consequently, Defendant argues that Plaintiff was not an eligible employee afforded the protections of the FMLA.

There are cases holding that eligibility under the FMLA is determined at the time when leave is first granted. *See, e.g., Barron v. Runyon,* 11 F. Supp. 2d 676 (E.D. Va. 1998); *Lacoparra v. Pergament Home Centers, Inc,* 982 F. Supp. 213 (S.D.N.Y. 1997). These cases primarily involved intermittent leave situations, where an employee took leave at various periods in between periods of employment. The defendants argued that an

employee who was initially eligible for leave could thereafter lose her FMLA eligibility for subsequent leave requests if the employee's qualifications dropped below the threshold requirements. Essentially, these Defendants argued that an employee had to establish her eligibility at the beginning of every request for leave, regardless of whether the employee was initially eligible, and regardless of whether the request was for the same condition. The courts considering this argument have appropriately rejected it. Once an employee establishes eligibility under the FMLA for a particular condition, she should not be required to re-establish eligibility for each subsequent request for intermittent leave.

However, in the present case, Defendant seeks to misapply these holdings. Defendant argues that an employee's eligibility under the FMLA is calculated once, and only once – at the time the employee first takes leave for a medical condition. According to Defendant, an employee beset by a serious medical condition before she has met the threshold requirements for eligibility can never be eligible for the protections of the FMLA if *any* leave is taken before the statutory requirements are met. Thus, under Defendant's theory, if an employee was diagnosed with cancer after working 11 months and 29 days and then took leave on that date, she would be forever barred for receiving FMLA benefits related to that particular bout with cancer. However, if the same employee waited two days before taking her leave, she would be afforded the full protection of the FMLA. In the opinion of the Court, this construction of the eligibility requirements does not make sense. Certainly FMLA eligibility may not be stripped away, but that does not necessarily

mean that eligibility could not be subsequently acquired through the passage of time.

In this case, Plaintiff first requested leave when she was ineligible for FMLA benefits. She then requested additional leave one month later when she was eligible. Accordingly, Plaintiff was entitled to the protections afforded by the FMLA.[2]

2. *FMLA Violation*

Defendant admits that it never informed Plaintiff of her FMLA eligibility following her requests for leave, and also never designated in writing that Plaintiff's leave was to be counted against her FMLA entitlements. Plaintiff points to the regulations, arguing that liability has been established.

The regulations promulgated by the Department of Labor clearly place the burden upon the employer to inform an employee whether leave is designated as FMLA leave. *See* 29 C.F.R. § 825.208 ("in all circumstances, it is the employer's responsibility to designate leave, paid or unpaid, as FMLA-qualifying, and to give notice of the designation to the employee as provided in this section"). According to the regulations:

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[2] In light of this ruling, the Court need not consider whether Plaintiff would have been "deemed eligible" under 29 C.F.R. § 825.110(d). The Court notes, however, that there is persuasive authority finding this regulation invalid because it is inconsistent with the text and intent of the FMLA. *See Wolke v. Dreadnought Marine, Inc.*, 954 F.Supp. 1133, 1134 (E.D. Va. 1997).

> If the employer has the requisite knowledge to make a determination that the paid leave is for an FMLA reason at the time the employee either gives notice of the need for leave or commences leave and fails to designate the leave as FMLA leave (and so notify the employee in accordance with paragraph (b)), the employer may not designate leave as FMLA leave retroactively, and may designate only prospectively as of the date of notification to the employee of the designation. In such circumstances, the employee is subject to the full protections of the Act, but none of the absence preceding the notice to the employee of the designation may be counted against the employee's 12-week FMLA leave entitlement.

29 CFR § 825.208. The regulations further state that "if an employee takes paid or unpaid leave and the employer does not designate the leave as FMLA leave, the leave taken does not count against an employee's FMLA entitlement." 29 C.F.R. § 825.700(a).

Based upon the plain language of the regulations, it would appear that there is no genuine issue of material fact as to whether Defendant violated the Act. However, Defendant argues that under the facts of this case, no violation can be found as a matter of law because Defendant provided Plaintiff more leave than required by the FMLA, as well as all of the other protections contained in the FMLA.

Indeed, the undisputed facts demonstrate that Defendant's employee leave program was far more generous than the baseline established by the FMLA. Under Defendant's company leave program, Plaintiff was allowed a

maximum of 30 weeks of company leave, which she exhausted in full. During this time, Defendant maintained Plaintiff's health insurance benefits, and even exceeded the requirements of the FMLA by paying Plaintiff's insurance premiums for six months. Defendant also held Plaintiff's position open for her during the entire 30 weeks of leave. According to Defendant, these facts preclude any liability for technical violation of the Act or the Regulations.

There is an abundance of case law supporting Defendant's position. Several courts have directly held that there could be no FMLA violation where an employee was provided greater than twelve weeks of leave. *See, e.g., Haggard v. Farmers Ins. Exchange*, 1996 WL 146048 (D. Or. 1996); *Kur v. Fox Valley Press, Inc*, 1997 WL 89140 at *3-4 (N.D. Ill. 1997). These particular courts have based their holdings on the text of the FMLA itself, without consideration of the regulations. However, one court that did consider the regulations reached the same result, concluding that the regulations impermissibly conflicted with the FMLA. *See Cox v. AutoZone, Inc.*, 990 F. Supp. 1369 (M.D. Ala. 1998). In *Cox*, the defendant's company leave policy allowed for employees to take 13 weeks of paid leave. The plaintiff took 15 weeks of leave due to her pregnancy, but the defendant failed to designate the leave as FMLA qualifying. When plaintiff was denied a return to her original position at the end of the 15 weeks, she argued that she was still entitled to an additional 12 weeks of FMLA leave.

The court's description of the plaintiffs' position in *Cox* is identical to the position advanced by Plaintiff here:

> Plaintiff is, in effect, converting FMLA from a statute which provides a minimum, a baseline, of federally mandated unpaid leave, into a statute which mandates an additional 12 weeks of leave for all employees, even those who already have employer provided leave. This is inconsistent with the text and guarantees of the statute.

Cox, 990 F. Supp. at 1373. The court then undertook an extensive analysis of the legislative intent behind the FMLA and the glaringly inconsistent regulations adopted by the Department of Labor. The court found "a clear intent of Congress to protect only those workers who take 12 or fewer weeks of leave." *Id.* at 1380. With respect to the regulations, the court found that they "added requirements which not only go beyond those of the statute, but which are inconsistent with the stated purpose of the statute and which would grant entitlements which were not given by Congress." *Id.* 1381. The court ultimately granted summary judgment for the defendant.

The Court finds the reasoning in *Cox* persuasive and squarely applicable to the present case. Here, Plaintiff took 30 weeks of company provided leave and reaped additional benefits far exceeding those provided by the FMLA. Accordingly, she was not entitled to an additional 12 weeks of FMLA leave. Plaintiffs' motion for summary judgment as to liability on her FMLA claim is hereby denied. Defendant's motion for summary judgment on Plaintiffs' FMLA claim is hereby granted.

B. Plaintiffs' ADA and Arkansas Civil Rights Act Claims for Failure to Accommodate[3]

The ADA prohibits an employer from discriminating against an employee "because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment." 42 U.S.C. § 12112(a). As defined by the ADA, "discrimination" includes:

> Not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless . . . [the employer] can demonstrate that the accommodation would impose an undue hardship on the operation of the . . . [employer's] business.

Id. § 12112(b)(5)(A). "Disability" is defined as "(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment." 42 U.S.C. § 12102(2). "[O]therwise qualified" means that the individual, "with or without reasonable accommodation, can perform the essential functions of the employment position that such

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[3] The Court will look to case law interpreting the ADA in assessing Plaintiff's failure to accommodate claim under the Arkansas Act. While the Arkansas Act does not specifically address the right to an accommodation of a physical or mental disability, it does refer to the right of an "otherwise qualified person" to "obtain and hold employment without discrimination." Ark. Code Ann. § 16-123-107.

individual holds or desires." *Id.* § 12111(8). Thus, to establish a claim under the ADA, Plaintiff must show (1) that she has a disability; (2) that she is qualified to perform the essential functions of the job, with or without reasonable accommodation; and (3) that she has suffered adverse employment action because of her disability. *Benson v. Northwest Airlines, Inc.*, 62 F.3d 1108, 1112 (8th Cir. 1995) (*citing Wooten v. Farmland Foods*, 58 F.3d 382, 385 (8th Cir. 1995)).

Plaintiff contends that her ADA failure to accommodate claim is not subject to the burden shifting analysis set forth in *McDonnell-Douglas Corp. v. Green*, 411 U.S. 792 (1973), citing a Seventh Circuit case, *Bultemeyer v. Fort Wayne Community Schools*, 100 F.3d 1281 (7th Cir. 1996). Although this issue has not been directly addressed by the Eighth Circuit, the rationale expressed in *Bultemeyer* is persuasive.[4] This case is not a disparate treatment case, and the *McDonnell-Douglas* burden shifting method seems unnecessary and inappropriate. As in *Bultemeyer*, Plaintiff's claim "alleges facts which, if proven, could directly establish a violation of the ADA." *Id.* at 1283. Furthermore, the reason for the discharge is not disputed. Defendant admits that it terminated Plaintiff after she exhausted her company leave (due to her cancer) and could not return to work. Accordingly, there should be no

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[4] In *Dush v. Appleton Electric Co.*, 124 F.3d 957 (8th Cir. 1997), the Eighth Circuit did cite with approval the use of the burden shifting analysis in *Price v. S-B Power Tool*, 75 F.3d 362 (8th Cir. 1996). However, *Price* was a disparate treatment case, and the issue of whether burden shifting was appropriate in a failure to accommodate case was not raised in either *Dush* or *Price*.

need for indirect proof or burden shifting, and the Court will not apply that framework here. But regardless of what standard is used, Plaintiff must still demonstrate a genuine issue of material fact with respect to each element of her claim.

Defendant first contends that summary judgment is warranted because there is no genuine issue of material fact that Plaintiff is not "disabled" within the meaning of the ADA. Defendant points primarily to the fact that Plaintiffs' cancer is now in remission and that Plaintiff has been gainfully employed since December of 1996.

The ADA defines "disability" as a "physical or mental impairment that substantially limits" one or more of the major life activities of the individual claiming to have a disability. 42 U.S.C. § 12102(2). Major life activities include "functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working." 29 C.F.R. § 1630.2(i), as well as "sitting, standing, lifting [and] reaching." 29 C.F.R. § 1630 app.

The record indicates Plaintiff underwent extensive radiation therapy for her cancer during the months prior to her dismissal. The record also indicates that, at least for a significant period of time, Plaintiff was "substantially limited" in many of her life activities. *See* Affidavit of Plaintiff (submitted as Exhibit "A" to Plf.'s Resp. to Def.'s Stmt. of Undisputed Material Facts). Furthermore, although Plaintiff's cancer is now in remission, her disability is to be evaluated as of the time of the employment decision. *Moore v. Payless Shoe Source*, 139 F.2d 1210 (8th Cir. 1998). After a thorough review of the record, the

Court believes that there are genuine issues of material fact as to whether Plaintiff is disabled. Accordingly, summary judgment with respect to this issue would not be appropriate.

Defendant next contends that summary judgment is appropriate because Plaintiff cannot show that she was qualified to perform the essential functions of her job, with or without accommodation, nor can she demonstrate that she requested an accommodation prior to her termination. The Eighth Circuit recently stated that "an employee who is 'unable to come to work on a regular basis [is] unable to satisfy any of the functions of the job in question, much less the essential ones.' " *Moore v. Payless Shoe Source*, 139 F.3d 1210 (8th Cir. 1998) (*quoting Halperin v. Abacus Tech. Corp.*, 128 F.3d 191, 198 (4th Cir.1997)); *see also Foremanye v. Board of Community College Trustees*, 956 F.Supp. 574, 578-79 (D. Md. 1996); *Rogers v. International Marine Terminals, Inc.*, 87 F.3d 755, 759 (5th Cir. 1996) (employee who, at time of termination, could not attend work due to medical condition was not "qualified" under the ADA).

Here, the undisputed material facts demonstrate that Plaintiff was not "otherwise qualified" at the time of her termination. Plaintiff commenced medical leave pursuant to Defendant's leave program on February 21, 1996, and continued on medical leave for 7 months. *See* Def.'s Statement of Undisputed Material Facts ¶¶ 4-7 (admitted). Plaintiff requested six 30-day extensions of her medical leave. *Id.* ¶ 7 (admitted). On each leave request, Plaintiff's physicians stated that Plaintiff was unable to perform any

work for the length of the requested leave. *Id.* ¶ 8 (admitted). For six months of Plaintiff's leave, Defendant continued to provide Plaintiff with health insurance, paying the premiums consistent with its policy. *Id.* ¶ 9 (admitted). On August 8, 1996, Plaintiff was notified of her rights to Cobra insurance continuation, but opted not to obtain Cobra coverage because she could not afford the premiums. *Id.* ¶ 10 (admitted). Plaintiff's employment with Defendant was terminated on September 20, 1996, because she had exhausted all of her company leave. *Id.* ¶ 11 (admitted). Plaintiff requested additional leave or, in the alternative, a reduced-work schedule on September 26, 1996, six days after her termination. *Id.* ¶¶ 11-13 (admitted).

In light of these facts, there exist no genuine issues of material fact as to whether Plaintiff was qualified to perform the essential functions of her job at the time of her termination. Plaintiff was completely unable to work for seven months prior to her termination, and she exhausted all of her company provided leave. There are absolutely no facts in the record to demonstrate that, on the date of Plaintiff's termination, Defendant had any reason to believe that Plaintiff was able to return to work or would have been able to return in the near future. In fact, the undisputed facts clearly demonstrate that she could not have returned to work. Plaintiff's physician did not release her to work until December of 1996, several months after her termination. *Id.* ¶ 14 (admitted). Furthermore, it is clear that there was no reasonable accommodation that would have allowed Plaintiff to perform the essential functions of her employment in light of the fact that she could not work at all. Employers are not

required to accommodate employees by allowing them indefinite leave.[5] *Myers v. Hose*, 50 F.3d 278, 283 (4th Cir.1995); *Hudson v. MCI Telecommunications Corp.*, 87 F.3d 1167 (10th Cir.1996); *Watkins v. J & S Oil Co.*, 977 F. Supp. 520, 526 (D. Me. 1997). As stated by the court in *Meyers*:

> [The ADA] contain[s] no reference to an individual's future ability to perform the essential functions of his position. To the contrary, [it is] formulated entirely in the present tense, framing the precise issue as whether an individual "can" (not "will be able to") perform the job with reasonable accommodation.

Meyers, 50 F.3d at 283. And Finally, Plaintiff did not request her alleged accommodations of additional leave or a reduced work-schedule until six days following her termination. Defendant simply cannot be held liable for failing to provide an accommodation that was not requested until after Plaintiff's termination.

In sum, the ADA does not require employers to be omniscient, nor does it require employers to indefinitely maintain employees on extended medical leave. If an employee seeks to invoke the protections of the ADA, she must at a minimum produce facts demonstrating that she could have performed the essential functions of her employment with an accommodation, and that she requested the accommodation *prior* to her termination. In this instance the record conclusively demonstrates that Plaintiff could not (and in fact did not) meet these

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[5] This principle particularly applies in this instance because Plaintiff had already exhausted seven full months of leave at the time of her termination.

requirements. Accordingly, Defendant's motion for summary judgment with respect to Plaintiff's ADA and Arkansas Civil Rights Act claims is hereby granted.

IV. Conclusion

In accordance with the above, Plaintiff's motion for partial summary judgment (Docket #21) is DENIED. Defendant's cross-motion for partial summary judgment (Docket #33) is GRANTED. Defendant's second motion for partial summary judgment (Docket #47) is GRANTED. Judgment shall be entered forthwith dismissing Plaintiff's claims in their entirety. All other pending motions are hereby DENIED as moot.

IT IS SO ORDERED this 3 day of November, 1998.

/s/ James M. Moody
James M. Moody
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

TRACY RAGSDALE PLAINTIFF

V. NO. J-C-97-475

WOLVERINE WORLDWIDE, INC DEFENDANT
d/b/a FROLIC FOOTWEAR

JUDGMENT

(Filed Nov. 3, 1998)

On November 3, 1998, the Court entered an Order granting Summary Judgment with respect to each remaining claim set forth in Plaintiffs' Second Amended Complaint.

IT IS, THEREFORE, ORDERED AND ADJUDGED that Plaintiffs' Complaint is hereby dismissed with prejudice in its entirety.

IT IS SO ORDERED this 3 day of November, 1998.

/s/ James M. Moody
James M. Moody
United States
District Judge

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

TRACY RAGSDALE PLAINTIFF

V. CASE NO. J-C-97-475

WOLVERINE WORLDWIDE, INC.
d/b/a FROLIC FOOTWEAR DEFENDANT

ORDER

(Filed Aug. 5, 1999)

Plaintiff's Motion to Alter or Amend is denied (#67). *See McGregor v. Autozone, Inc.*, ___ F.3d ___, 1999 WL 496230 (11th Cir. 1999) (regulation requiring employers to notify employee that an absence is being counted as FMLA leave before employer can use leave against the 12 week entitlement of the Family Medical Leave Act ("FMLA") is invalid because it converts FMLA's minimum of federally mandated unpaid leave into an entitlement to an additional 12 weeks of leave unless employer specifically and prospectively notifies the employee that he or she is using FMLA leave).

IT IS SO ORDERED this 3 day of Aug., 1999.

/s/ James M. Moody
James M. Moody
United States District Judge

[Mailing Certificate Omitted in Printing]

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 99-3319

Tracy Ragsdale; Warren E. Depwe, Trustee in Bankruptcy for the Tracy Ragsdale Estate,	*	
Appellants,	*	3:97 CV 00475
v.	*	Appeal from the United States District Court for the Eastern District of Arkansas.
Wolverine Worldwide, Inc., doing business as Frolic Footwear, a foreign corporation doing business in the State of Arkansas,	*	(Filed Sept. 14, 2000)
Appellee.	*	

Submitted: April 12, 2000
Filed: July 11, 2000

Before: WOLLMAN, Chief Judge, MAGILL, Circuit Judge, and FRANK,* District Judge.

MAGILL, Circuit Judge.

This appeal considers the validity of certain regulations promulgated by the Department of Labor (DOL)

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* The Honorable Donovan W. Frank, United States District Judge for the District of Minnesota, sitting by designation.

under the Family and Medical Leave Act of 1993 (FMLA), 29 U.S.C. §§ 2601, *et seq*. The appeal arises out of a suit brought by Tracy Ragsdale against Wolverine Worldwide, Inc. (Wolverine) under the FMLA, the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101, *et seq*, and the Arkansas Civil Rights Act of 1993 (Arkansas Act), Ark. Code Ann. § 16-123-101, *et seq*, alleging that Wolverine improperly denied her FMLA leave and terminated her in violation of the FMLA, ADA, and Arkansas Act. Ragsdale appeals the district court's[1] grant of summary judgment to Wolverine on her FMLA claim. We affirm the judgment of the district court.

I. BACKGROUND

The relevant factual background of this case is relatively simple. Ragsdale began her employment with Wolverine on March 17, 1995. She was diagnosed with cancer in February 1996 and requested medical leave from Wolverine on February 21, 1996. Wolverine granted her request, and Ragsdale's leave commenced on that date.

Wolverine's leave policy allowed employees with six months of service to take leave for up to seven months. The leave policy required employees on leave to submit requests for extensions of leave every thirty days. Consistent with that requirement, Ragsdale requested extensions of her leave on March 18, April 22, May 21, June 20, July 22, and August 15 of 1996. Each request for an extension was granted by Wolverine. Wolverine did not,

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[1] The Honorable James M. Moody, United States District Judge for the Eastern District of Arkansas.

however, notify Ragsdale of her leave eligibility under the FMLA or her right to have leave designated as FMLA leave.

On September 20, 1996, Ragsdale was terminated because she had exhausted her seven months of company provided leave and was unable to return to work. On September 26, 1996, Ragsdale returned to Wolverine and requested additional FMLA leave. She was informed that she had requested and utilized all of her available leave. Ragsdale then requested that she be allowed to return to work on a reduced hour schedule. Wolverine denied her request. Ragsdale's physician released her to work in December of 1996, and she has been actively employed in full-time positions since December 31, 1996. Ragsdale is no longer being treated for cancer and is currently capable of working without restrictions.

On December 22, 1997, Ragsdale filed suit against Wolverine alleging claims under the FMLA, ADA and Arkansas Act. On November 3, 1998, the district court granted summary judgment to Wolverine on Ragsdale's FMLA claim. The court found that the DOL's regulations, which provide that unless the employer prospectively designates company leave as FMLA leave, the twelve week FMLA leave entitlement does not begin to run, are based on an erroneous interpretation of the FMLA and cannot be enforced. The district court also dismissed Ragsdale's ADA and Arkansas Act claims, holding that Ragsdale was not qualified to perform the essential functions of her job at the time of her termination. Subsequently, Ragsdale filed the present appeal.

II. ANALYSIS

Ragsdale claims that the district court erred in invalidating the DOL's regulations and dismissing her FMLA claim. She claims that because Wolverine never formally designated any of the seven months of company leave as FMLA leave, DOL regulations properly mandate that the clock never began to run on her FMLA leave. Thus, Ragsdale contends that she was denied twelve weeks of FMLA designated leave, and that she remained entitled to be restored to her position through December 1996 when she was able to return to work. Wolverine concedes that it did not formally designate Ragsdale's leave as FMLA-qualifying but argues that the DOL regulations are invalid because they impermissibly expand the scope of rights conferred on employees under the FMLA. We review the district court's grant of summary judgment de novo. *See Sahulka v. Lucent Tech., Inc.*, 206 F.3d 763, 767 (8th Cir. 2000).

A. Chevron Standard of Review

In *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), the Supreme Court explained the analysis that a court must utilize when reviewing agency decisions which apply or interpret a statute that the agency administers. The *Chevron* test has two parts. First, a reviewing court must determine whether congressional intent is clear from the plain language of the statute. *See id.* at 842-43. "In ascertaining the plain meaning of the statute, the court must look to the particular statutory language at issue, as well as the

language and design of the statute as a whole." *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (citation omitted). When an analysis of the statute reveals a clear congressional intent, an agency interpretation of the statute contrary to that intent is not entitled to deference. *See id.* A court must not defer when, it "appears from the statute or legislative history that the accommodation is not one that Congress would have sanctioned." *Chevron*, 467 U.S. at 845. If, however, the language of the statute is ambiguous, and the legislative history reveals no clear congressional intent, a reviewing court must defer to a reasonable agency interpretation of the statutory provision. *See id.* at 843. In all cases, although the level of deference afforded an agency interpretation may appear high, the court remains the final authority in matters of statutory interpretation and "must reject administrative constructions which are contrary to clear congressional intent." *Id.* at 843 n.9.

B. Department of Labor Employer Notice Regulations

Subchapter I of the FMLA sets forth the FMLA's substantive provisions. An employee is eligible for FMLA leave if she has worked for a covered employer[2] for at least 1,250 hours during the preceding twelve months. *See* 29 U.S.C. § 2611(2)(A)(ii). The FMLA provides that an eligible employee shall be entitled to a total of twelve workweeks of leave during any twelve-month period for

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[2] The reach of the FMLA is relatively limited. It only applies to, among other entities, private-sector employers of fifty or more employees. *See* 29 U.S.C. § 2611(4)(A)(i).

one or more of the following reasons: (1) the birth of the employee's child, (2) the placement of a child with the employee for adoption or foster care, (3) taking care of certain relatives with "serious health condition[s]," and (4) when the employee herself cannot "perform the functions" of her position because she suffers from a "serious health condition." *See* 29 U.S.C. § 2612(a)(1). After an employee has taken FMLA leave, the employee is entitled to full restoration of her prior position or restoration to an "equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment." 29 U.S.C. § 2614(a)(1).

The FMLA directs the Secretary of Labor to, *inter alia*, "prescribe such regulations as are necessary to carry out subchapter I." 29 U.S.C. § 2654. Although the FMLA does not itself require that the employer designate leave as FMLA leave, the DOL regulations do require such designation. Seizing on the lack of employer notice provisions in the text of the statute, the DOL has issued a series of regulations requiring that an employer provide an employee with notice that company leave is FMLA leave both in situations where the employee is taking paid leave and where the employee is taking unpaid leave and providing for severe consequences for the failure to give employees such notice. The DOL has mandated that "[i]n all circumstances, it is the employer's responsibility to designate leave, paid or unpaid, as FMLA-qualifying, and to give notice of the designation to the employee as provided in this section. . . . " 29 C.F.R. § 825.208(a). In two separate regulations, the DOL provides that failure to notify an employee that leave taken pursuant to the company leave policy is also designated as FMLA leave will

result in the employee still retaining her twelve week FMLA "entitlement." In 29 C.F.R. § 825.208(c), the DOL applies the principle to paid leave under an employer provided leave program, stating:

> If the employer has the requisite knowledge to make a determination that the paid leave is for an FMLA reason at the time the employer either gives notice of the need for leave or commences leave and fails to designate the leave as FMLA leave (and so notify the employee in accordance with paragraph (b)), the employer may not designate leave as FMLA leave retroactively, and may designate only prospectively as of the date of notification to the employee of the designation. In such circumstances, the employee is subject to the full protections of the Act, but none of the absence preceding the notice to the employee of the designation may be counted against the employee's 12-week FMLA leave entitlement.

29 C.F.R. § 208(c). The DOL also applies the principle to unpaid employer provided leave, stating: "[i]f an employee takes paid or unpaid leave and the employer does not designate the leave as FMLA leave, the leave taken does not count against an employee's FMLA entitlement." 29 C.F.R. § 825.700(a).

As stated above, the issue before the court is whether the above-quoted DOL regulations are a permissible interpretation of the FMLA. Recently, several courts have addressed this precise question and have come to differing conclusions, resulting in a split of authority. *Compare McGregor v. Autozone, Inc.*, 180 F.3d 1305 (11th Cir. 1999) (striking down the regulations because they improperly

expand the substantive guarantees of the statute); *Schloer v. Lucent Tech., Inc.*, 2000 WL 128698 (D. Md. 2000) (same); *Neal v. Children's Habilitation Ctr.*, 1999 WL 706117 (N.D. Ill. 1999) (same); *Donnellan v. New York City Transit Auth.*, 1999 WL 527901 (S.D.N.Y. 1999) (criticizing the regulations but finding for the employer on narrower ground); *with Plant v. Morton Int'l, Inc.*, 2000 WL 572458 (6th Cir. 2000) (distinguishing between notice requirements for paid as opposed to unpaid leave but appearing to uphold both 29 C.F.R. §§ 825.208(c) and 825.700(a) as valid exercises of regulatory power); *Ritchie v. Grand Casinos of Mississippi, Inc.*, 49 F.Supp.2d 878 (S.D. Miss. 1999) (holding that the DOL's regulations appropriately "filled the gaps" of the FMLA); *Chan v. Loyola Univ. Med. Ctr.*, 1999 WL 1080372 (N.D. Ill. 1999) (same).

We agree with the Eleventh Circuit that the DOL's regulations improperly "convert[ ] the statute's minimum of federally-mandated unpaid leave into an entitlement to an additional 12 weeks of leave unless the employer specifically and prospectively notifies the employee that she is using her FMLA leave." *McGregor*, 180 F.3d at 1308. The FMLA was intended only to set a minimum standard of leave for employers to provide to employees. Under the FMLA, twelve weeks of leave is both the minimum the employer must provide and the maximum that the statute requires. The provisions of the FMLA are noticeably bereft of any purpose to interfere with employer leave policies which grant greater leave rights than the FMLA or to require more generous leave plans than the minimum twelve weeks of unpaid leave mandated by the FMLA. *See* 29 U.S.C. § 2652(a) ("Nothing in this Act or any amendment made by this Act shall be construed to

diminish the obligation of an employer to comply with any collective bargaining agreement or any employment benefit program or plan that provides greater family or medical leave rights to employees than the rights established under this Act or any amendment made by this Act"); 29 U.S.C. § 2653(b) ("Nothing in this Act or any amendment made by this Act shall be construed to discourage employers from adopting or retaining leave policies more generous than any policies that comply with the requirements under this Act or any amendment made by this Act."); 29 U.S.C. § 2612(d)(2)(B) ("nothing in this subchapter shall require an employer to provide paid sick leave or paid medical leave in any situation in which such employer would not normally provide any such paid leave").

The terms of the statute contemplate only that the employer will be required to provide a "total" of twelve weeks of unpaid leave. Entirely absent from the text of the FMLA is any indication that the FMLA was designed to entitle an employee to additional leave under the FMLA when the employer's leave plan already provides for twelve weeks of FMLA qualifying leave. *See* 29 U.S.C. § 2612(a)(1) ("employee shall be entitled to a *total* of 12 workweeks of leave during any 12-month period") (emphasis supplied); 29 U.S.C. § 2612(d)(1) ("If an employer provides paid leave for fewer than 12 workweeks, the *additional* weeks of leave *necessary to attain the 12 workweeks* of leave . . . may be provided without compensation") (emphasis added).

The FMLA does define the relationship between FMLA leave and employer-provided paid leave when an

employee takes leave that qualifies as FMLA leave. It provides:

> An eligible employee may elect, or an employer may require the employee, to substitute any of the accrued paid vacation leave, personal leave, or medical or sick leave of the employee . . . for any part of the 12-week period of such leave under such subsection, except that nothing in this subchapter shall require an employer to provide paid sick leave or paid medical leave in any situation in which such employer would not normally provide any such paid leave.

29 U.S.C. § 2612(d)(2)(B). The obvious purpose of § 2612(d)(2)(B) is to ensure that neither an employee nor an employer will be disadvantaged by the existence of the FMLA. The provision enables the employee to take advantage of *paid* employer-provided leave that the employee would be entitled to regardless of the existence of the FMLA. The provision also protects the employer; if an employee requests FMLA leave, the employer can require that the employee also use employer-provided leave thereby, if providing at least twelve weeks of leave, saving itself from having to extend more leave than provided for in its leave policy. The DOL has failed to appreciate and differentiate those circumstances when notice should be required from employers in order to protect employees' substantive FMLA rights from those situations where notice is not necessary to protect FMLA rights. Rather than simply recognizing that the purpose of § 2612(d)(2)(B) was to disadvantage neither employer nor employee by the existence of the FMLA when the employer already has a sufficient leave policy in place, the Secretary of Labor has apparently seized upon the

"employer may require" provision in § 2612(d)(2)(B) to justify the imposition of a disproportionate penalty in all cases where employers fail to designate leave as FMLA leave.

Other sections of the FMLA strongly support the view that where Congress desired explicit notice provisions with significant consequences for their violation, it provided for them in the text of the statute. In 29 U.S.C. § 2612(e)(1), the statute details notice obligations of employees to employers when the employee requests qualifying leave under the FMLA. *See Carter v. Ford Motor Co.*, 121 F.3d 1146 (8th Cir. 1997) (holding that an employee merely informing the employer that he would be out and did not know when he would return and offering no further information was not adequate notice under the FMLA). In 29 U.S.C. § 2614(b)(1)(A), the FMLA allows an employer to refuse to restore a "highly compensated employee" to his or her former position if holding open the position would cause "substantial and grievous economic injury to the operations of the employer." 29 U.S.C. § 2614(b)(1)(A). In order to do so, however, the employer must give notice to the employee "at the time the employer determines such injury would occur" that the employer does not intend to restore the employee to his or her position. *See* 29 U.S.C. § 2614(b)(1)(B); *see also* 29 U.S.C. § 2619 (assessing monetary penalties for employers who do not post notices on the premises of the employer explaining FMLA rights).

Similar to the statutory text, the FMLA's legislative history supports the view that the FMLA was intended only to be a statute that provided a minimum labor standard; an assurance that employers would provide

employees with twelve weeks of leave every year. *See* S. Rep. No. 103-3, at 4 (1993), *reprinted in* 1993 U.S.C.C.A.N. 3, 6 (stating that the FMLA "accommodates the important societal interest in assisting families, by establishing a minimum standard for leave. The bill is based on the same principle as the child labor laws, the minimum wage, Social Security, the safety and health laws, the pension and welfare benefit laws, and other labor laws that establish minimum standards for employment"); S. Rep. No. 103-3, at 28 (1993), *reprinted in* U.S.C.C.A.N. 3, 30 ("Section 102(d) assures that an employee is entitled to the benefits of applicable paid leave, plus any remaining leave time made available by the act on an unpaid basis"). Any other view of the statute would likely upset the careful compromise reached by Congress when it passed the FMLA. *See* H. R. Rep. No. 135(1), at 37 (1991) ("The amount of time available for leave also reflects a compromise. The leave period was reduced to 12 weeks in response to concerns raised by employers who maintained that it was significantly easier to adjust work schedules or find temporary replacements over the shorter time period. While not ideal from the employees' perspective, a twelve week minimum represents a middle ground between the family needs of workers and an employer's business needs.").

The DOL regulations must be struck down. Although courts must defer to agency expertise, this Court cannot abrogate its mandate as the "final authority on issues of statutory construction" and must "reject administrative constructions which are contrary to clear congressional intent." *Chevron*, 467 U.S. at 843 n.9. The DOL regulations create rights which the statute clearly does not confer.

While the statute only requires the employer to provide twelve weeks of unpaid leave, under the DOL regulations, the employer could be forced to provide much more leave. The FMLA was intended to "balance the demands of the workplace with the needs of families," 29 U.S.C. § 2501(b)(1), "in a manner that accommodates the legitimate interests of employers," 29 U.S.C. § 2601(b)(3). The DOL regulations dispense with any pretense of balancing in favor of rigid and unnecessary regulations that penalize unwary employers.

It should be stressed that the court is not holding that any DOL regulations requiring employers to designate leave as FMLA leave would be invalid. There are various situations in which an employer's failure to give notice may function to interfere with or to deny an employee's substantive FMLA rights. For example, notice could be necessary where the employee claims that the sole reason she exceeded her FMLA leave was due to the employer's failure to notify her that her leave was designated as FMLA leave and if she had been so notified, she would have returned to work at the end of the twelve weeks. *See Longstreth v. Copple*, 189 F.R.D. 401 (N.D. Iowa 1999). Also, in some cases where the leave was anticipated, an employer's failure to provide notice that the leave counts against the FMLA entitlement could interfere with the employee's ability to plan and use future FMLA leave.

Although some situations may require employer notice, this case is not one of them. The DOL regulations improperly convert the FMLA into a statute which always provides an additional twelve weeks of leave unless the employer specifically notifies the employee prospectively that she is using her FMLA leave. This is

not consistent with the purpose of the FMLA. Congress only intended to mandate a minimum of twelve weeks of leave for employees, it did not intend to construct a trap for unwary employers who already provide for twelve or more weeks of leave for their employees. It is undisputed that Wolverine's employee leave program was far more generous than the baseline established by the FMLA. Under Wolverine's leave program, Ragsdale was allowed a maximum of thirty weeks of company leave, which she exhausted in full. During this time, Wolverine maintained Ragsdale's health insurance benefits, and even exceeded the requirements of the FMLA by paying Ragsdale's insurance premiums for six months. Moreover, Wolverine held Ragsdale's position open for her during the entire thirty weeks of leave.

Ragsdale's medical condition rendered her unable to work for substantially longer than the FMLA twelve-week period. To find that Wolverine's technical violation of the designation regulations functions as a denial of Ragsdale's FMLA rights would be an egregious elevation of form over substance; a result clearly not contemplated by the FMLA. In this case, the regulations directly contradict the statute by increasing the amount of leave that an employer must provide. Consequently, this court must hold 29 C.F.R. § 825.700(a) invalid insofar as it purports to require an employer to provide more than twelve weeks of leave time.

III. CONCLUSION

In sum, we affirm the district court's judgment holding that the DOL regulations are not based on a permissible interpretation of the FMLA and that, consequently, Ragsdale's FMLA claim must be dismissed.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

Supreme Court of the United States

No. 00-6029

Tracy Ragsdale,

Petitioner

v.

Wolverine Worldwide, Inc.

ON PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Eighth Circuit.

ON CONSIDERATION of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorai be, and the same is hereby, granted limited to the question presented by the Solicitor General in his brief for the United States as amicus curiae.

June 25, 2001

PETITIONER'S

BRIEF